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-2

[WRITTEN SUBMISSION ON BEHALF OF RESPONDENTS]

INDEX

S. No.	Item No.	Title Case No.	Appearing on Behalf of	Page No.
1.	901	State of U.P. vs Jai Bir Singh C.A. No. 897/2002 (IA No. 4/2016 - Impleadment Application)	New Trade Union Initiative	1-22
2.	901	State of U.P. vs Jai Bir Singh C.A. No. 897/2002 (IA No. 65699/2026- Intervention Application)	Centre of Indian Trade Union	23-36

3.	901	State of U.P. vs Jai Bir Singh C.A. No. 897/2002 (IA No. 75400/2026- Intervention Application)	All India Trade Union Congress	37-47
4.	901	State of U.P. vs Jai Bir Singh C.A. No. 897/2002 (IA No. - Impleadment Application)	Thamate, Centre for Rural Empowerment	48-57
5.	901.1	State of Haryana vs Rajesh C.A. No. 4646/2007	Rajesh	58-92
6.	901.5	Central Council for Research in Ayurveda & Siddha vs Brijesh Kumar Sharma C.A. No. 3119/2011	Brijesh Kumar Sharma	93-106
7.	901.8	State of Haryana Thr. Divisional Forest Officer (Territorial) vs Mahender Singh C.A. No. 1276/2011	Mahender Singh	107-120
8.	901.9	State of Haryana vs Om Prakash C.A. No. 1279/2001	Om Prakash	121-136
9.	901.10	State of Haryana vs Hawa	Hawa Singh	137-149

		Singh C.A. No. 278/2001		
10.	901.11	The State of Maharashtra & Anr. vs Serva Sharamik Sangh C.A. No. 6471/2002	Serva Sharamik Sangh	150-175
11.	901.13	Ramji Singh And Ors vs State Of U.P. And Ors. C.A. No. 8597/2001	Workmen	176-216
12.	901.14	State Of Gujarat vs Meenaben Vindorai Jetty C/O Gujarat Engineering General Kamdar Union C.A. No. 4569/2002	Meenaben Vindorai Jetty	217-230
13.	901.15	The Chief Conservator v. Marigowda C.A. No. 5101/2002	Marigowda	231-242
14.	901.17	Workmen Rep. Secretary Anusandhan & Firm Mazdoor Union vs Central Rainfed U.R. Research Station And Anr SLP(C) No. 20982/2002	Workmen Rep. Secy. Anusandhan	243-253
15.	901.18	National Remote Sensing Centre v. H. Sunder and Ors.	H. Sunder and Ors.	254-285

		C.A. No. 355-358/2003		
16.	901.25	The Principal, Government I.T.I. College, and Anr. vs R.D. Naik C.A. No. 1274/2007	R.D. Naik	286-298
17.	901.31	Assistant Executive Engineer, Zilla Panchyat vs Gangadhar SLP (C) No. 4329/2008	Gangadhar	299-312
18.	901.44	The Commissioner H.R & C.E Administration Nungambakkam & Anr. vs D. Renganathan And Ors Etc. SLP (C) No. 12679-12682/2014	D. Renganathan And Ors Etc.	313-324
19.	901.45	Zilla Pariviksha Va Anurakshan Sanghatna vs Shruti Chandrashekhar Moghe SLP (C) No. 1857/2016	Shruti Chandrashekhar Moghe	325-338
20.	901.46	M/S Shree Gopal Krishna Gosala, Cuttack vs Ashok Kumar Behera SLP (C) No. 14156/2021	Ashok Kumar Behera	339-343

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INDEX

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TABLE OF CONTENTS

A. Introduction

1) These written submissions are being filed in compliance with the order of this Hon'ble Court dated 12.10.2023.

2) This Bench has been constituted to decide whether the judgement in *Bangalore Water Supply and Sewerage Board v Rajappa*[1] [hereafter, 'BWSSB'] requires reconsideration. *BWSSB* settled the meaning of section 2 (j) of the Industrial Disputes Act.

3) Section 2 (j) reads as follows:

> *"(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;"*

4) BWSSB held:

> *'Industry', as defined in Sec, 2 (j) and explained as Banerji, has a wide import.*
>
> *(a) Where* [there is] *(i) systematic activity, (ii) organized by co- operation between employer and employee….(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes …. prima facie, there is an 'industry' in that enterprise.*
>
> *(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.*
>
> *(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.*
>
> *(d) If the Organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.*

5) According to an SCC search for "bangalore water supply" AND "rajappa", the judgment has been cited in at least 84 Supreme Court cases, and at least 898 High Court Cases (including all High Courts except Jammu & Kashmir). At least 31 judgments clearly follow or approve of BWSSB in a labour law context, another 20 approve of it in the context of principles of statutory interpretation, and only 5 appear to question BWSSB. Of these, 1(Bombay Telephone) has been overruled; 1 (Coir Board) made a reference for reconsideration which was later refused; 2 are the orders passed in the present proceedings, and the last (Physical Research Labs) only seems to apply BWSSB incorrectly and notes that BWSSB is not exhaustive on the question of sovereign functions. Another 10 distinguish BWSSB, and the remaining 18 either cite or refer to BWSSB in varying contexts, but do not materially engage with the judgment.

B. The referral order's 4 reasons for doubting BWSSB do not withstand close scrutiny.[2]

a) The first reason, that BWSSB had inhibited Parliament/the executive from enacting/notifying an amendment to section 2(j) or bringing a more expansive or a more restrictive definition, is demonstrably wrong as a matter of fact.

[1] (1978) 2 SCC 213

[2] *State of U.P. v. Jai Bir Singh*, (2005) 5 SCC 1

6) It is most respectfully submitted that Parliament was not inhibited from bringing a more restrictive definition of "industry": in fact, the Industrial Disputes (Amendment) Bill, 1982[3], sought to enact a more restrictive definition of industry, one that excluded 9 categories of establishment that would have qualified as industry under BWSSB's definition. Therefore, not only was Parliament aware that it had the power to enact a more restrictive definition notwithstanding the judgment in BWSSB, it had even done so. Parliament's amended definition had not been brought into force by notification by the Government; however, the referral order's concern that this had not been done because the executive may have been inhibited by this Court's decision in BWSSB was also entirely misplaced, as is apparent from this Court's order in *Union of India v Shree Gajanan Maharaj Sansthan.*[4] That case had reached this Court by way of an SLP against a Bombay High Court order requiring the Government to "examine and decide as to when it would be feasible to give effect to the provisions of the Amending Act." In proceedings before this Court, the Central Govt filed an affidavit setting out its reasons for not notifying the amended definition. Paragraphs 3 and 4 from that affidavit, as reproduced in this Court's judgement, read 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 later 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."*

7) The rest of the 16 paragraphs reproduced in the judgment set out the efforts undertaken to bring in appropriate amendments. Nowhere in the affidavit, as reproduced in this court's order, did the government state that it was inhibited in bringing amended 2(j) into force because of BWSSB.

8) In fact, the Industrial Disputes (Amendment) Bill, 1982, replaced the words of section 2(j) with this court's words in BWSSB[5]. Having adopted this Court's words as better describing what was within the scope of 'industry', the bill then went on to expressly exclude nine categories of establishments. The 'Hospitals and Other Institutions (Settlement of Disputes) Bill' in the Rajya Sabha enacted a new industrial-law/labour-law regime for establishments that were excluded from the ID Act by the 1982 Amendment Act.The 'Hospitals and Other Institutions (Settlement

[3] Act No. 46 of 1982

[4] (2002) 5 SCC 44

[5] Supra, n 3, s.2 (c)

of Disputes) Bill', however, encountered opposition and was never passed. It was for this reason - that a law to cover those establishments that the amended definition would remove from the protection of the ID Act had not been passed - that the 1982 amended definition was not brought into force. This is clear not just from the government's affidavit but also:

- from the Statements of Objects and Reasons of both bills;
- from what the minister who piloted the bills (Sh. Bhagwat Jha Azad) said while introducing them;[6]
- from parliament's discussions on both bills;[7]

9) As such, far from being inhibited by this Court's decision in BWSSB, Parliament consciously accepted BWSSB's interpretation of what section 2(j), as enacted in 1947, covered.

10) In any event, the referral order was patently in error in assuming Parliament/ the executive's ignorance of the long-settled position that Parliament can enact/amend law to even nullify decisions of this court and remove their basis.[8]

11) Therefore, there was no basis whatsoever for the referral order's observation that this Court's decision in BWSSB had any effect on parliament's/executive's enacting or not enacting or bringing into force amendments to the definition of industry, much less an inhibiting effect.

b) <u>The second reason - that BWSSB *"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"* - appears to have been in ignorance of an earlier 9-judge bench decision. That decision had held that '*sovereign functions*' was, even in its origins in the UK, a mere "rule of construction"; that it was an "archaic rule" based on Crown prerogative; it had "no relevance to a democratic republic"; it was "inconsistent with the rule of law based on the doctrine of equality"; and that it 'bristled' with anomalies.</u>

12) Importantly, the ID Act did not exempt sovereign functions, either in express terms or by implication. "Sovereign functions", in the context of section 2 (j) appears to have entered debates before this Hon'ble Court for the first time in *State of Bombay v. Hospital Mazdoor Sabha*[9], where, while rejecting the contention that "the field of governmental or regal activities which are excluded from the operation of Section

[6] LS Deb 23 April 1982, Vol XXVIII No. 42, pgs 429-430

[7] LS Deb 23 April 1982, Vol XXVIII No. 42, pgs 411-445; LS Deb 9 August 1982, Vol XXXI No. 21, pgs 371-492; RS Deb 11 August 1982, pgs 254-451

[8] Refer *Indira Nehru Gandhi v. Raj Narain*, 1975 (suppl.) SCC 1; *I.N. Saxena etc. v. State of Madhya Pradesh* 1976 (4) SCC 750; *M/s. Tirath Ram Rajindra Nath, Lucknow v. State of U.P. and Anr.* (1973) 3 SCC 585; *State Bank's Staff Union (Madras Circle) vs. Union of India* (2005) 7 SCC 584.

[9] 1960 SCC OnLine SC 44

2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies", this Court held that only those activities "governmental or regal or sovereign" which had "been pithily described by Lord Watson as 'the primary and inalienable functions of a constitutional Government' (Vide: Coomber v. Justices of Berks)" were outside the scope of Section 2(j) (in the passage cited in *Hospital Mazdoor Sabha*, Lord Watson had listed "the administration of justice, the maintenance of order, and the repression of crime"[10] as "the primary and inalienable functions of a constitutional Government"). However, an earlier 9-judge bench of this court in, *Superintendent and Remembrancer of Legal Affairs v. Corpn. of Calcutta*,[11] had already held that

> *... the immunity of the sovereign was a "rule of construction" and was "not a 'law in force' within the meaning of Article 372" [12];*
>
> *... it was an archaic rule based on the prerogative and perfection of the Crown and had "no relevance to a democratic republic"; it was "inconsistent with the rule of law based on the doctrine of equality."; and*
>
> *... it was "..inconsistent with our republican polity" and "bristles with anomalies,[13]*

13) It was in this context that BWSSB held that "sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies." The referral order's suggestion that "wherever the government undertakes public welfare activities in discharge of its constitutional obligations", "such activities should be treated as activities in discharge of sovereign functions falling outside the purview of 'industry'" has never been treated as law even in England — or even in the heyday of the 'sovereign functions' doctrine. In *Superintendent* (supra), this Court took note that

> *"Even in England this rule of interpretation has not been treated as inflexible. It is gradually losing ground in many branches of law. The incongruity of the rule of discrimination in favour of the Crown was pointed out by Glanville L. Williams in his treatise on 'Crown Proceedings', at p. 53 :*

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[10] "in my opinion the administration of justice, the maintenance of order, and the repression of crime are among the primary and inalienable functions of a constitutional Government," *Richard Coomber (Surveyor Of Taxes) v The Justices Of The County Of Berks*, 03 Dec 1883 9 App Cas 61, HL.

[11] *Superintendent and Remembrancer of West Bengal v. Corpn. of Calcutta*, 1966 SCC OnLine SC 42: This 9-judge bench decision has been followed by this Court, without doubt or demur. Most recently, this Court held in *B.K. Ravichander*, (2021) 14 SCC 703 "governments, taking a cue from the English experience, initially asserted that they are not subject to the law insisting upon the continuation of the royal prerogative (by virtue of Article 372 of the Constitution) which enabled the crown in the UK to assert its right to insist that it was not bound by the law, unless there was express statutory intent. Mercifully, a later judgment overruled that understanding."

[12] Ibid., pg.187

[13] Ibid., pg. 176

'The rule originated in the Middle Ages, when it perhaps had some justification. Its survival, however, is due to little but the vis inertiae.'

The author continues at p. 54 :

'With the great extension in the activities of the State -and the number of servants employed by it, and with the modern idea, expressed in the Crown Proceedings Act, [compare in this connection Art. 300 of our Constitution], "that the State should be accountable in wide measure to the law, the presumption should be that a statute binds the Crown rather than it does not."[14]

14) An earlier 5-Judge Bench had already held that "it was realized in the United Kingdom that that rule had become outmoded ….. the very citadel of the absolute rule of immunity of the sovereign has now been blown up."[15]

15) The BWSSB view of 'sovereign functions' is the modern view accepted in jurisdictions around the world and was the view restated in *Nagendera Rao and Co. v. The State of Andhra Pradesh*[16], and also in *Jagannath Maruti Kondhare*[17], in the following terms:

> *"11. As to which function could be, and should be, taken as regal or sovereign function has been recently examined by a Bench of this Court, to which one of us (Hansaria, J.) was a party. This was in Nagendera Rao and Co. v. The State of Andhra Pradesh, in which case Sahai, J. speaking for the Bench examined this question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of sovereign immunity. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the old and archaic concept of a sovereignty does not survive as sovereignty now vests in the people. It is because of this that in the aforesaid Australian case the distinction between sovereign and non-sovereign functions was categorised as regal and non-regal. In some cases the expression used is State function, whereas in some Governmental function."*[18]

16) More recently, the Gujarat High Court in *Legal Heirs Of Decd. Umedmiya R Rathod & Others Versus State Of Gujarat*[19], conducted a detailed review of the law on 'sovereign functions', while rejecting a 'sovereign immunity' claim by the state where an innocent bystander had lost his life in firing by the army.

17) This Court has never read sovereign functions in the manner suggested in the referral order. A review of other common-law jurisdictions suggests that no other jurisdiction, in modern times, has read sovereign functions in the manner suggested

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[14] Ibid., pg. 180

[15] *The State of Rajasthan v. Mst. Vidhyawati and another*, 1962 SCC OnLine 144

[16] (1994) 5 SCC 205

[17] (1996) 2 SCC 293

[18] Ibid., para 11

[19] C/LPA/473/1996, Letters Patent Appeal No. 473 Of 1996 In First Appeal No. 5952 of 1995, decided on 04/08/2017

by the referral order.[20] Indeed, if the interpretation suggested in the referral order were to be accepted, all government employees – except those covered by the Administrative Tribunals Act and by Articles 309–311 of the Constitution – would be rendered without a statutory remedy, potentially opening the floodgates of the already overburdened Article 226 jurisdiction. It is respectfully submitted that such a reading would be contrary to the constitutional scheme.

c) <u>The third reason, that BWSSB examined the industrial disputes act "only as a worker oriented statute", is also wrong as a matter of fact.</u>

18) It is respectfully submitted that it is incorrect to state that BWSSB examined the industrial disputes act "only as a worker oriented statute." This is borne out by para 29 of the judgment, where it is observed that: "... a developing country is anxious to preserve the smooth flow of goods and services, and interdict undue exploitation and, towards those ends, labour legislation is enacted and must receive liberal construction to fulfil its role." In any event, even if BWSSB considered the act "only as a worker oriented statute", that is no reason to reconsider it, since "Merely because a view different from or contrary to what has been expressed earlier is preferable is no reason to reconsider an earlier decision." [21] The threshold for reconsideration, it is respectfully submitted, is significantly higher than the availability or existence of an alternative view.

d) <u>The fourth reason, that the referral order preferred the view in *Management of Safdarjung Hospital*[22] does not account for a fatal flaw in MSH: the very first step of its reasoning - a rejection of the time-tested interpretation of 'means and includes' provisions - was a misstep based on an erroneous reference to the wrong Australian provision as the basis for Sn 2 (j).</u>

16) Section 2 (j) uses the well-known 'means and includes' mode to define industry. Before *MSH*, <u>*Hospital Mazdoor Sabha*</u> had interpreted section 2 (j) in the manner that such clauses had always been interpreted since at least the 1898 Privy Council decision, <u>*Isabella Dilworth Widow and others v The Commissioner for Land and Income Tax and The Commissioner of Stamps New Zealand*</u>[23], i.e., it held that the "first clause of the definition gives the statutory meaning of "industry" and the second clause deliberately refers to **<u>several other items of industry</u>** and brings them in the definition in an inclusive way."[24] (Emphasis supplied)

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[20] For example, refer to the US Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985)

[21] *Supreme Court Advocates-on-Record Association And Another vs Union of India* (2016) 5 SCC 1 [SCOARA, 2016]

[22] *The Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi,* (1970) 1 SCC 735

[23] (1899) AC 99 (PC). See also, *In Re: The Agricultural Holdings (England) Act, 1883; Gough v. Gough* (1891) 2 QB 665 (CA)

[24] Supra, n 9

19) In MSH however, this Court disapproved this manner of reading section 2 (j) holding that 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."*[25]

20) MSH's refusal to read the second clause of 2 (j) as extending the meaning beyond the terms of the first clause was because it found that section 2 (j) only "modifies somewhat the definition of industry in s. 4 of the 'Commonwealth Conciliation and Arbitration Act 1909-1970) (Acts Nos. 13 of 1904 and 7 of 1910) of Australia'"[26]. Section 4, of the 'Commonwealth Conciliation and Arbitration Act 1909-1970), was not a two-part definition but one composite whole listing 7 categories of enterprises and requiring that they employ or hire workmen to qualify as industry. *Management Of Safdarjung Hospital* found:

> *"Although the two definitions are worded differently the purport of both is the same. It is not necessary to view our definition in two parts. The definition read as a whole denotes a collective enterprise in which employers and employees are associated."*[27]

21) The error in *MSH*, however, was that Section 2 (j) was not a modification of Section 4 of the 'Commonwealth Conciliation and Arbitration Act, 1904', but a modification of a markedly different 1911 amendment of the 1904 Australian Act - i.e., section 3 of the 'Commonwealth Conciliation and Arbitration Act, 1911'.

22) Below is a table with section 4 of the 1904 act, section 3 of the 1911 act and section 2 (j) of the ID Act, 1947

Commonwealth Conciliation & Arbitration Act, 1904 section 4	**Commonwealth Conciliation & Arbitration Act, 1911 section 3**	**Industrial Disputes Act, 1947, section 2(j)**

[25] Supra, n 22, para 24
[26] Supra, n 22, para 11
[27] Supra, n 22, para 12

"Industry" *means* business, trade, manufacture, undertaking, calling, service, or employment, on land or water, *in which persons are employed* for pay, hire, advantage, or reward, excepting only persons engaged in domestic service, and persons engaged in agricultural, viticultural, horticultural, or dairying pursuits;	'Industry' *includes*— (*a*) any business, trade, manufacture, undertaking, or calling of employers, on land or water; (*b*) any calling, service, employment, handicraft, or industrial occupation or avocation of employees, on land or water; and (*c*) a branch of an industry and a group of industries.	"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;

23) The differences between the 1904 Act and its 1911 amendment are plain to see: the 1904 act used a 'restrictive', 'exhaustive' definition whereas the 1911 act used an 'inclusive', 'extensive' definition. The 1904 act stipulated a closed-list of 7 categories which were included within the ambit of industry, whereas the 1911 act stipulated an *inclusive* list of 11 categories. The 1904 act required that apart from fitting within one of the seven categories, the enterprise had to be one in which "persons must be employed for pay, hire, advantage or reward", whereas there was no such requirement in the 1911 act. The 1904 act excluded a closed list of exempted persons, whereas the 1911 act had no such exclusion.

24) If ***MSH*** had noticed the 1911 Act as the origin of section 2(j) it would have realized that the 'means' part and the 'includes' part of section 2 (j) were separate clauses, and that this Court's view in ***Hospital Mazdoor Sabha*** - that the "first clause of the definition gives the statutory meaning of 'industry' and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way"[28] - was correct.

25) The entire foundation for ***MSH*** excluding charitable ventures and government departments from the scope of section 2 (j), therefore, was its failure to notice that section 2 (j) was a modified version of the 1911 act and not the 1904 act, and there was little in common between 2 (j) and the 1904 act.

26) Importantly, in ***MSH,*** this Court approved two unbroken lines of precedent: the first, stretching back to 1952, that the terms 'business', 'trade', 'undertaking',

[28] Supra, n 9, para 10

'manufacture' or 'calling of employers' were all terms of wide import[29]. And the second, that 'profit motive' and 'capital investment' were irrelevant in determining whether activity was industry. But even while it reiterated the uninterrupted line of precedent from 1952 - that profit motive and capital investment were irrelevant – it introduced, for the first time in the history of this court's interpretation of 2 (j), the requirement that the activity had to be 'analogous to trade or business in *a commercial sense*'[30], or, "economic activity which can be said to be analogous to trade or business"[31]. In this, it held that Hospital Mazdoor Sabha was wrong to assume 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."*[32]

27) The judgement, however, provided no guidance on what was '*economic activity* unrelated to capital and profit-making' or what 'analogous to trade or business in a *commercial sense*' meant, or how the test of 'in a commercial sense' could be applied if 'profit motive' and 'capital investment' were irrelevant. As a result, the question of what fell within section 2 (j) was cast into a sea of uncertainty. This became quickly apparent in the years following as courts tried to apply *MSH*'s reasoning, with conflicting results.

28) More fundamentally - and quite apart from the vagueness of the terms '*economic activity* unrelated to capital and profit-making' and 'analogous to trade or business in a *commercial sense*' - MSH's narrowing of 'industry' to 'analogous to trade or business in *a commercial sense*' was founded in its refusal to interpret 2 (j)'s 'means and includes' provision in the *Hospital Mazdoor Sabha* way: the way that such provisions had always been interpreted. If all the 'means and includes' clauses of section 2 (j) are given their full effect it will leave no doubt that 'economic activity' or 'commercial sense' are irrelevant in determining whether activity was industry in terms of section 2 (j). MSH, instead, entirely silenced all the 'includes' clauses - 'calling', 'service', 'employment', 'handicraft', or 'industrial occupation or avocation of workmen'.

29) The learned author, G.P. Singh, upon whom this Court has often relied when considering issues of statutory interpretation, encapsulates this Court's precedent injuncting against treating words of statute as surplusage, thus[33]:

> *"It is not a sound principle of construction", said Patanjali Shastry CJI, "to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the*

[29] In so doing, MSH was merely following precedent: every judgement before MSH and every judgement after it that has referred to these terms in section 2 (j) has held that they were terms of 'wide import'.

[30] Supra, n 22, para 21

[31] Supra, n 22, para 34

[32] Supra, n 22, para 24

[33] GP Singh, *Principles of Statutory Interpretation (also including General Clauses Act, 1897 with Notes)* (14th ed, LexisNexis 2021), chapter 2, section 1

contemplation of the statute". …… And as pointed out by Jagannathdas J, "It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application". ….. "In the interpretation of statutes", observed Das Gupta J, "the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect". ……. The Legislature is deemed not to waste its words or to say anything in vain ……. and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons…….

C. MSH's interpretation would make 'undertaking', 'calling of employers', 'calling', service', and 'employment' redundant: a construction which requires addition or substitution of words or which results in rejection of words as meaningless must be avoided.

30) This Court has long held that:

i) *"...* words of width and amplitude ought not generally to be cut down";[34]

ii) "... a section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act…….while interpreting statutory provisions, cannot add words to a statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result;[35]

iii) "… under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."[36]

31) It is respectfully submitted that *Hospital Mazdoor Sabha's* interpretation follows these principles, while *MSH's* reading is contrary to them. The former, therefore ought to be preferred to the latter.

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[34] Refer *Gurbaksh Singh Sibbia Etc vs State Of Punjab*, (1980) 2 SCC 565; *Aswini Kumar Ghose v. Arabinda Bose*, (1952) 2 SCC 237; *Union of India and Anr v Hansoli Devi* (2002) 7 SCC 273; *Shyam Kishori Devi v. Patna Municipal Corporation & Anr.*, 1966 SCC OnLine SCC 49; *State of West Bengal v. Anindya Sundar Das & ors.*, 2022 SCC OnLine SC 1382; *New Okhla Industrial Development Authority (Noida) v. Yunus and Ors.*, (2022) 9 SCC 516

[35] *Nusli Neville Wadia vs Ivory Properties*, AIR 2019 SC 5125

[36] Ibid

D. If government departments are not covered by the Industrial Disputes Act, it will open the floodgates of Article 226 because a statutory remedy against arbitrary state action will be disabled.

32) Writ courts have consistently refused Article 226 jurisdiction unless 'exceptional circumstances' are made out because a statutory remedy is available under the ID Act Act.[37] Removing Government departments from the sweep of 'industry' will create a statutory vacuum leaving workers of government departments - who are protected against arbitrary action by Chapter III of the Constitution - with no remedy bar Article 226, potentially opening the floodgates to 226 litigation.

E. If this Hon'ble Court were to interpret 2 (j) as excluding categories of activity that were covered by BWSSB, it would then have to step into the breach - as it did in *Vishaka, Seema Lepcha* and *Medha Kotwal Lele* - to lay down guidelines for the effective enforcement of the basic human rights of equality and guarantee against harassment and abuse, until Parliament fills the gap.

33) In so far as the ID Act prevents arbitrary action to the detriment of workers (in its protection against unfair termination *[Sn 2A & 11 of ID Act]*; summary statutory remedies for non-payment of wages *[Sn 33C(2) ID Act read with Article 23];* protection from unfair labour practises *[Chapter VC ID Act]*; protection against unfair change in service conditions *[Sn 9A ID Act]* – the act is a statute to provide for the effective enforcement of the basic human right of equality and a guarantee against harassment and abuse at workplaces[38] and of the right to human dignity enforceable under Article 21 of the Constitution of India *(Kaushal Kishore)*[39].

34) In *Kaushal Kishore vs Union of India*, this Court held that, conceptually, all rights under Part III of the Constitution apply horizontally, that is, between private parties. This Court also noted that the question of when a particular right will apply horizontally, and the scope and the extent to which it will do so, will be adjudicated on a case-to-case basis. While this Court in *Kaushal Kishore* did not lay down a specific test for the application of horizontality, Courts in comparative jurisdictions have done so. For example, Section 8(2) of the Constitution of South Africa states that a fundamental right will apply to a private party "if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right." In *Khumalo vs Holomisa*[40], the Constitutional Court of South Africa interpreted this section to mean that horizontality would apply depending on

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[37] *Basant Kumar Sarkar and Ors. v. Eagle Rolling Mills Ltd. and Ors.* (1964) 6 SCR 913); *U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* (2004) 4 SCC 268; *Automobiles Ltd. v. Kamlekar Shantarum Wadke* (1976) 1 SCC 496; *Rajasthan SRTC v. Krishna Kant* (1995) 5 SCC 75; *Chandrakant Tukaram Nikam v. Muncipal Corporation of Ahmedabad and Anr.* (2002) 2 SCC 542; *Scooters India and Ors. v. Vijai V. Eldred* (1998) 6 SCC 549; A.P. Foods vs S. Samuel & Ors, (2006) 5 SCC 469

[38] *Vishaka and Ors. vs State of Rajasthan and Ors.* (1997) 6 SCC 241

[39] (2023) 4 SCC 1

[40] 2002 (8) BCLR 771 (CC) (Para 33)

"the intensity of the constitutional right in question, coupled with the potential invasion of that right which could be occasioned by persons other than the state or organs of state."[41] The key test, therefore, is whether a private party is capable of violating the right in question. For example, a private party cannot violate Article 22 of the Constitution, which provides for preventive detention. However, a private party can violate Article 19(1)(a) of the Constitution (which was at issue both in *Kaushal Kishor*e and in *Khumalo*, supra).

35) This is also the test accepted by scholars. Jean Thomas argues that the best way of understanding horizontality is that horizontal rights step in where "vulnerable valuable interests" would be left purely at the mercy of private actors, if rights-application was to be limited to the State.[42]

36) When considered from this perspective, it is clear that to the extent that Article 21 protects the right to dignity, it applies horizontally, and applies with specific force to the workplace. There is a clear analogy between the forms and extent of control exercised by states and employers from the perspective of the individual citizen or the employee[43]. This is exemplified by "hierarchical firm organisation bureaucracy and widespread employer control of the labour process."[44]

37) The ability of the employer to affect the rights of his workers is further characterized by the fact that "those who do not own are economically dependent on employers for jobs, wages, and thus their livelihoods … a reason for calling this structural domination is that the unfreedom of the laborer is not a product of his situation vis à- vis a specific employer, but rather of his dependence on some employer or another for livelihood."[45] This proposition was judicially recognised by this Court in *PUDR vs Union of India*, (1982) 3 SCC 235, where the Court held that Article 23's guarantee against forced labour included a right to a minimum wage against the private employer. While the Court's judgment rested on the specific text of Article 23, which is horizontally applicable, its reasoning extends to other Part III rights as well:

> *"... in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. (paragraph 13)"*

38) Thus, the employment relation resembles the power relation of an authoritarian state over its citizens. If workers' rights can be viewed as fundamental or human rights,

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[41] Ibid

[42] J Thomas, *Public Rights, Private Relations* (Oxford University Press, 2015), 10-11

[43] Elizabeth Anderson, *Private Government How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton University Press, 2017)

[44] A. Bogg, 'Republican Non-Domination and Labour Law: New Normativity or a Trojan Horse?' (2017) 33 International Journal of Comparative Labour Law & Amp; Industrial Relations 391, 402.

[45] A. Gourevitch, 'Labor Republicanism and the Transformation of Work' (2013) 41 Political Theory 591, 602

these are stringent entitlements with an increased moral and legal force. They can therefore be a countervailing legal force against an employer's power based on ownership of private property. They may also ensure that workers' essential interests are not sacrificed in the political compromises of legislation.[46]

39) This aspect was affirmed by the Supreme Court of Canada, when it recognised a constitutionally guaranteed right to collective bargaining, grounded in the principles of dignity at the workplace. The Court held:

> *... the right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work.*[47]

40) International human rights law affirms this proposition. The International Labour Organisation's 1998 Declaration entrenches a set of labour standards titled "Fundamental Principles And Rights At Work"[48], which all member-States are required to respect and protect. The Preface to the Declaration specifically notes that its purpose is to "empower governments and workers' and employers' organizations to effectively tackle the challenges to freedom, dignity, rights and health in their everyday life."

41) The 2000 European Charter of Fundamental Rights[49] also guarantees the right to dignity in the workplace: it enjoins member States to ensure that every worker has "the right to working conditions which respect his or her health, safety and dignity."

42) It is therefore submitted that the fundamental right to dignity under Article 21 applies horizontally, and is directly applicable to the relationship in the workplace, between the employer and the workers

43) In the Indian context, as in most jurisdictions, this right is secured by legislation. Countries do not generally have labour codes written into their Constitutions, but leave this task to legislation.

44) It therefore follows that where the right to dignity at the workplace depends on legislative coverage (through, for example, the Industrial Disputes Act), this Court should lean towards an interpretation that includes workers within the protective ambit of law, rather than an interpretation that excludes them. In other words, the Court should avoid an interpretation that would leave workers in a "rightless zone". A "Constitution-compliant reading" of the Industrial Disputes Act supports the

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[46] H. Collins, G Lester and V Mantouvalou, 'Introduction' in H Collins, G Lester and V Mantouvalou (eds), *Philosophical Foundations of Labour Law* (Oxford University Press, 2018), 9

[47] *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia* 2007 SCC 27

[48] Adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022)

[49] 2000/C 364/01 (Article 31)

judgment in BWSSB, as the alternative reading would have the result of stripping workers of their rights to dignity.

45) In *Vishaka,* this Court had to lay down enforceable guidelines for the preservation and enforcement of the right to gender equality of working women in exercise of its power under Article 141. These guidelines were to fill the gap caused by the absence of appropriate legislation to protect the dignity and equality of working women.

> *"In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."*[50]

46) *Vishaka,* was followed with further guidelines and binding stipulations in *Seema Lepcha v. State of Sikkim & Ors.,*[51] *Medha Kotwal Lele and others v. Union of india and others*[52]. It is most respectfully submitted that insofar as it prevents arbitrary action to the detriment of workers, if this Hon'ble Court were to interpret 2(j) as excluding categories of activity that were covered by BWSSB, this Hon'ble Court would then have to lay down guidelines for the effective enforcement of the basic human rights of equality and guarantee against harassment and abuse, more particularly against harassment at work places, to fill the gaps until Parliament were acts in this sphere.

F. On Reconsideration

a) The principles for when this Court will reconsider its decision were recently considered in *Supreme Court Advocates-on-Record Association And Another vs Union of India*[53]

47) Madan Lokur, J., concurring with the majority opinion of Kehar J., distilled the principles at paragraph 673, page 579. The relevant principles are:

i) "The power to reconsider is not unrestricted or unlimited, but is confined within ***narrow limits*** and must be exercised ***sparingly*** and ***under exceptional circumstances*** for ***clear and compelling reasons***." (emphasis supplied)

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[50] Supra, n. 38

[51] (2013) 11 SCC 641

[52] (2013) 1 SCC 312

[53] Supra, n. 21

ii) "Merely because a view different from or contrary to what has been expressed earlier is preferable is no reason to reconsider an earlier decision."

iii) "The endeavor of this Court must always be to ensure that the law is definite and certain and continuity in the interpretation of the law is maintained."

iv) To exercise the power to reconsider, "the Court must be convinced that the earlier decision is *'plainly erroneous'* **and** has *"a baneful effect on the public"*; that it is *vague* or *inconsistent* or *manifestly wrong*."

v) "If the decision concerns an interpretation of the Constitution, perhaps the bar for reconsideration might be lowered a bit (as in Kesavananda Bharati). Although the remedy of amending the Constitution is available to Parliament, not all amendments are easy to carry out. Some amendments require following the procedure of ratification by the States. Nevertheless, where a constitutional issue is involved, the necessity of reconsideration should be shown beyond all reasonable doubt, the remedy of amending the Constitution always being available to Parliament."

vi) The reason for applying a higher threshold before reconsidering errors in interpretation of statute as compared to reconsidering errors in interpretation of the constitution is that "while an erroneous interpretation of the former by the court could be corrected by the legislature, it was not easy to amend the Constitution to correct its erroneous interpretation by the court."[54]

b) It is respectfully submitted that the case for reference in *SCAORA, 2016* was at least as strong (if not stronger) than the case sought to be made out in the present reference (*BWSSB*) for the following reasons:

48) As set out below, these reasons are:

(i) *The Second* Judges' Case involved the interpretation of several provisions of the Constitution, including Articles 124, 217 and 50; the threshold for reference in a dispute over the interpretation of constitutional provisions is lower than a disagreement over the interpretation of a statutory provision. the *BWSSB* judgment was dealing only with a statutory provision.

(ii) Like the *BWSSB* judgment, the *Second* Judges' Case was decided by a split court; a nine-judge bench divided 7:2.

(iii) Far more than the *BWSSB* judgment, the judgment in the *Second* Judges' Case was undermined by an absence of deliberation between the majority and the dissenting judges. In paragraph 490, Justice Punchhi observes:

> *"This nine-Judge Bench sat from April 7, 1993, to hear this momentous matter concluding its hearing on May 11, 1993, close to the onset of the summer vacation. I entertained the belief that we all, after July 12.1993,*

[54] Ibid, Paras 656 and 673.1

on the re-opening of the Court, if not earlier, would sit together and hold some meaningful meetings, having a free and frank discussion on each and every topic which had engaged our attention, striving for a unanimous decision in this historic matter concerning mainly the institution of the Chief Justice of India, relatable to this Court. I was indeed overtaken when I received the draft opinion dated June 14, 1993 authored by my learned, brother J.S. Verma, J. for himself and on behalf of my learned brethren Yogeshwar Dayal, G.N. Ray, Dr. A.S.Anand and S.P. Bharucha, JJ. The fait accompli appeared a stark reality; the majority opinion an accomplishment. The hopes I entertained of a free and frank discussion vanished. But then came the opinion dated August 24, 1993 of my learned brother Ahmadi, J. like a pebble of hope hewn out of a mountain of despair, followed by the opinions of my learned brethren Kuldip Singh and Pandian, JJ, dated September 7, 1993 and September 9, 1993 respectively. No meaningful meeting thereafter was possible as the views by that time seemed to have been polarized. So now the firm opinions of the eight brethren, as communicated are known to me. Loaded with these opinions I set out to express my own, more as a duty to the venture embarked upon, for I owe it immesurably, for being party to the referal."

(iv) In *The Second* Judges' Case, Justice Kuldip Singh's dissenting opinion (7th September, 1993) was delivered almost three months after the majority (14th June, 1993).

(v) Like the *BWSSB* judgment, the *Second* Judges' Case overruled a contrary opinion of a bench strength that was one degree lower (*First* Judges' Case).

(vi) The correctness of the *Second* Judges' Case as well as *The Third* Judges' Case was expressly doubted by noted scholars such as H.M. Seervai, and by the Law Commission in its 214th Report: The report of the Law Commission was unanimous. One of the main arguments made by the Law Commission was that the judgment was not delivered in "open court", and therefore violated Article 145(4) of the Constitution. With respect to the *Third* Judges' Case, the Law Commission was of the view that the judgment effectively rewrote Article 124(2) of the Constitution.

(vii) However, despite claims that the decisions in the *Second and Third Judges* case were "plainly erroneous", "manifestly wrong" and had "a baneful effect on the public", including claims that the decisions had re-written the Constitution, the prayer for reference was declined, since an extremely high threshold must be satisfied for reference.

G. Other errors in the 2005 referral order:

a) The referral order states (@ paragraph 25) that - "it is difficult to ascertain whether the opinion of Krishna Iyer, J. given on his own behalf and on behalf of Bhagwati and Desai JJ can be held to be an authoritative precedent which would require no reconsideration...."

49) It is respectfully submitted that there is no doubt that *BWSSB* is authoritative precedent since:

i) The order in *BWSSB* was signed by all the members of the bench on 21 February 1978. (page 284 of *BWSSB*)

ii) Krishna Iyer, J., handed down the majority opinion the same day for himself, Bhagwati and Desai JJ. Beg, CJ., handed down a concurring judgment on 21 February 1978 itself.

iii) Chandrachud CJ, handed down another concurring judgment on 07 April 1978

iv) Jaswant Singh J, delivered a concurring in part, dissenting in part judgment for himself and Tulzapurkar J, also on 7 April 1978.

v) All Hon'ble judges signed the order on the same day, and on the day that all judges signed the order, the majority opinion of Krishna Iyer, Bhagwati, and Desai and the concurring opinion of Beg JJ was delivered

vi) All the judges had the benefit of the opinion of the four judges who delivered judgements on 21 February 1978 - Krishna Iyer, Bhagwati, Desai and Beg JJ. Therefore, even if all remaining three judges disagreed with the majority opinion, the majority opinion would still be the controlling authority.

vii) The concurrence by Chandrachud, J, in *BWSSB* is complete. Having concurred with the majority, Chandrachud, J also sets out why he might have gone further than the majority. This is no dissent but complete concurrence.

b) <u>It is respectfully submitted that it is also not correct to say that Beg, CJ. dissented, or even, that the opinion of Krishna Iyer, J., was only 'generally agreed to' by Beg, CJ., (para 11 of referral order) because:</u>

50) Beg, CJ., opened his opinion with a categorical assertion that he was in agreement with the "<u>line of thinking</u>" adopted as well as "<u>the conclusion reached</u>" by Krishna Iyer, J. In the same breath Beg, CJ. clarified that he was only <u>adding his "reasons for this agreement",</u> to "indicate" his approach.

51) Beg, CJ., also approvingly noted that the opinion of Krishna Iyer, J., had not discarded the old test for industry but had only 'restored'the tests laid down by this Court in *D. N. Banerji*'s case, and, after that, in the *Corporation of the City of Nagpur v. Its Employees*, and *State of Bombay & Ors. v. The Hospital Mazdoor Sabha & (OrS.)*"

52) Beg, CJ., also unequivocally rejected the decision in *Safdarjung Hospital's* case and stated that he '**<u>completely agreed</u>'** with Krishna Iyer, J., that the decisions of this Court in the *MSH* case and **<u>other cases mentioned by Krishna Iyer, J., must be held to be overruled</u>**."(para 160 @ page at 290) (emphasis supplied)

53) Beg, CJ's remark that he had no time to discuss the large number of cases cited, including cases on what are known as "sovereign" functions comes after he has stated that - "I have contented myself with a very brief and hurried outline of **my line of thinking** partly because **I am in agreement with the conclusions** of my learned brother Iyer **and I also endorse his reasoning almost wholly**...". (para 165 @ page at p 291) (emphasis supplied)

54) Even on sovereign functions, Beg CJ., found that"to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct."There is no divergence from the view of the majority. (para 168 @ page at 292)

55) Beg, CJ, closes his judgement once again categorically stating his concurrence with the majority in the following words:"For the reasons given above, I endorse the opinion and the conclusions of my learned brother Krishna Iyer." (para 169 @ page at 292)

56) It would therefore be wholly erroneous to find that Beg, CJ's opinion dissented from that of Krishna Iyer J.

c) There is no conflict in the decisions of this Hon'ble court in *Conservator of Forests v. Jagannath Maruti Kondhare*[55], and *State of Gujarat v. Pratamsingh Narsinh Parmar*[56].

57) In *Jagannath Maruti Kondhare'*s decision had this to remark about *BWSSB "*A perusal of that judgment shows that the main judgment was written by Krishna Iyer, J. (on behalf of self, Bhagwati and Desai, JJ.) ..... **Beg, CJ endorsed the opinion and conclusion of Krishna Iyer, J. in a concurrent judgment giving his own reasons..... the conclusions reached by Krishna Iyer, J. had been endorsed fully by two other learned Judges and Beg. CJ** did the same but for different reasons. We would, therefore, confine our attention to the conclusions reached by Krishna Iyer, J." *Jagannath Maruti Kondhare* found that a scheme for creation of a park for the benefit of the urban population could not be regarded as a part of 'inalienable' or 'inescapable' functions of the state; this honourable Court therefore refused the contention that the scheme was part of sovereign function, outside the definition of industry. In *Pratamsingh Narsinh Parmar* on the other hand the petition was refused because petitioner had not made an assertion that the establishment in which he had been appointed is "an industry"; no different ratio or principal from that applied in *Jagannath Maruti*'s was suggested let alone applied in *Pratamsingh Narsinh Parmar's*. (emphasis supplied)

d) *BWSSB* is not responsible for "Awards of reinstatement and arrears of wages for past years..... experienced as a serious industrial hazard particularly by those engaged in private enterprise".

[55] (1996) 2 SCC 293
[56] (2001) 9 SCC 713

58) The legal regime for awards of reinstatement and back wages is found in the industrial disputes act and in other judgements of this Hon'ble court. *BWSSB* dealt only with the question of the interpretation of section 2 (j) of the Industrial Disputes Act – i.e., the scope of coverage of "industry".

PLACE: NEW DELHI

DATE: 25.04.2024

DRAWN BY: Jawahar Raja, Gautam Bhatia, Aditi Saraswat, Parth Goyal, Rashi Jain

SECTION –III-A

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

IN THE MATTER OF: -

State of U.P. **….Appellant**

VERSUS

Jai Bir Singh **……Respondent(s)**

I N D E X

S.No.	Particulars	Copies	Court Fees
1.	Written Submissions Settled By P V Surendranath, Senior Advocate	1+3	NIL

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IN THE SUPREME COURT OF INDIA

CIVIL APPLICANT JURISDICTION

I.A.NO. 65699 OF 2026
IN
CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

State of U.P. ….Appellant

VERSUS

Jai Bir Singh ……Respondent(s)

AND IN THE MATTER OF:

Centre of Indian Trade Unions (CITU) ...Applicant/Intervenor

WRITTEN SUBMISSIONS SETTLED BY P V SURENDRANATH, SENIOR ADVOCATE

I. Preliminary introductory submissions without specifics:

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

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

> **2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers**

and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

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

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

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

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

"144. **We over-rule Safdarjung, Solicitors' case,**

Gymkhana, Delhi University, Dhanrajgirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha is hereby rehabilitated. "

7. Para 140 to 143 are quoted below for convenience

":140. 'Industry', as defined in Sec, 2 (j) and explained hi Banerji, has a wide import.

Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to, celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an 'industry' in that enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the Organisation is a trade or business, it does not cease to, be one because of philanthropy animating the undertaking.

141. Although sec. 2(j) uses, words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' (provided the

nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the- fold of 'industry' undertakings, callings and services adventure 'analogous to the carrying on of trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if off the employment terms there is analogy.

142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing mom.

The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iiia) co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of sec. 2 (j).

A restricted category of professions, clubs, co-operatives and even Gurukulas and little research labs, may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantatively, in single simple ventures, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non- employee character of the unit.

If in a pious or altruistic mission many employ them-selves, free or for small honoraria, or likely return

mainly by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant, relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity, compassion, developmental passion or project.

143. The dominant nature test :

where a complex of activities, some of which qualify for exemption others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be true test. The whole, undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

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.

Even in departments discharging sovereign functions, if there are units which are industries and they are Substantially severable, then they can be considered to come within sec. 2(j).

> Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

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

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

10. It is respectfully submitted that the definition of 'Industry' as interpreted and stated in Para 140 to 144 are now incorporated in the definition of **S.2(p) of the Industrial Relations Code, 2020** which came into force on 21st November, 2025, *vide* S.O. 5320(E), dated 21-11-2025 , the same is extracted as follows:

"***industry***" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(*i*) any capital has been invested for the purpose of carrying on such activity; or

(*ii*) such activity is carried on with a motive to make any gain or profit, but does not include —

(*i*) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(*ii*) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(*iii*) any domestic service; or

(*iv*) any other activity as may be notified by the Central Government;

11. Though the New Labour & Industrial Code ,2020 contains various provisions against interest of working class and industrial peace the basic concept of Bangalore water Supply Case is accepted in the new definition of 'Industry', the provision 2 (p) (iv) permitting the Central Government to notify any other activity exempting from 'Industry" notwithstanding.

12. In light of section 2 (p) of Industrial Relations Code 2020 which is notified and come into force the 1982 amendment amending

Section 2 (j) with restricting clauses cannot have any bearing or legal impact on the interpretation of the expression "industry' as contained in the Industrial Disputes Act, 1947.

13. What are the activities relatable to "sovereign" functions of the government is an issue to be decided on case to case basis depending upon the nature of activity, facts of the case and the contexts. This is the case with charitable or Philanthropic service. These issues are to be decided on case to case basis only has stated and held by Bangalore Water Supply Case.

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

II. Bangalore Water Supply Case had no effect on Parliament or the Executive Government for making legislation and notifying the same amending (industry) with restrictive or expanding clauses.

1. The Parliament accepted Bangalore Water Supply Case's interpretation of Section 2 (j). It is a conscious decision fully aware of the requirement of employer/workers- capital and labour cooperation and peace in industry.

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

3. Wherever the Government undertakes public welfare activities in discharge of its constitutional obligations such activities cannot be treated as activities in discharge of

"sovereign function" outside the purview of industry. The present section 2 (p) 'Industry' in Industrial Relations Code 2020 does not given any such exemption for governmental activities either under Part IV or otherwise. This Hon'ble Court has time and again declared and restated that provisions under Part IV are not justiciable.

4. In **Superintendent and Legal Remembrancer State of West Bengal Vs. Corporation of Calcutta** this hon'ble Court stated that

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

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

> **"***As to which function could be, and should be, taken as regal or sovereign function has been recently examined by a Bench of this Court, to which one of us (Hansaria, J.) was a party. This was in Nagendera Rao and Co. v. The State of Andhra Pradesh , in which case Sahai, J. Speaking for the Bench examined this question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of sovereign immunity. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the old and archaic concept of a*

sovereignty does not survive as sovereignty now vests in the people. It is because of this that in the aforesaid Australian case the distinction between sovereign and non-sovereign functions was categorised as regal and non-regal. In some cases the expression used is State function, whereas in some Governmental function.". This judgment was following N Nagendra Rao & Co. Vs. State of A.P 1994 (6) SCC 205 Para 21 to 24.

6. The Majority opinions in Bangalore Water Supply case accepts this view.

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

1. The Safdarjung Hospital Case is wrongly decided rejecting the time tested interpretation of 'means and includes' Its refusal to read the second clause of section 2 (j) as extending the meaning beyond the terms of the first clause was because it found that section 2 (j) only "**modifies somewhat the definition of industry in section 4 of the Common Wealth Conciliation & Arbitration Act ."** In Safdharjung case it is found "***Although the two definitions are worded differently the purport of both is the same. It is not necessary to view our definition in two parts. The definition read as a whole denotes a collective enterprise in which employers and employees are associated***." As a matter of fact section 4 **of the Common Wealth Conciliation & Arbitration Act was** not a two part definition but one composite part listing 7 categories of enterprises and requiring that the employer hire workmen to qualify as industry. It is pertinent to note that as referred to in the introductory paragraph, above section 2 (j) was not a modification of section 4 **of the Common Wealth Conciliation & Arbitration Act** but a modification of totally different 1911 amendment of 1904 Australian Act section 3.

2. Had Safdarjung Case correctly noticed the 1911 Act as the origin of section 2 (j) it would not have discarded the 'means

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

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

IV. Reconsideration is not justified:

1. Reconsideration cannot be done lightly as declared by this Hon'ble court from time and again. The power is not unrestricted or unlimited. [Para 673 of **Supreme Court Advocates On Record Association & anr. Vs. Union of India [2013 (1) SCC 312**]. Merely because a view different from or contrary to what has been expressed earlier is preferable is no reason to consider a Larger Bench Constitution Bench Decision, unless and until it is convinced that earlier decision is plainly erroneous and has a baneful effect on the public or that it is inconsistent and manifestly wrong.

2. The judgment and findings – decisions in Bangalore Water Supply case is binding authoritative pronouncement. Chief Justice Beg did not dissent. He concurred with the findings

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

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IN THE SUPREME COURT OF INDIA
CIVIL APELLATE JURISDICTION

CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

STATE OF U.P. ...PETITIONER

VERSUS

JAI BIR SINGH ...RESPONDENT

AND IN THE MATTER OF:
ALL INDIA TRADE UNION
CONGRESS … APPLICANT /INTERVENER

INDEX

Place: New Delhi
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AARTHI RAJAN
Advocate for Respondent
AOR Code: 2547

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENER

Introductory submissions

1. The present reference concerns the interpretation of the expression "industry" in Section 2(j) of the Industrial Disputes Act, 1947 and the correctness of the principles stated in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa*** **[(1978) 2 SCC 213].**

2. The reference arises because, following *Bangalore Water Supply*, different Benches have applied the definition of "industry" differently in cases involving welfare schemes, government departments, public bodies and similar activities.

3. The present reference in *State of U.P. v. Jai Bir Singh* itself arose due to the apparent conflict between **Chief Conservator of Forests v. *Jagannath Maruti Kondhare* [(1996) 2 SCC 293] and *State of Gujarat v. Pratamsingh Narsinh Parmar* [(2001) 9 SCC 713]** on whether social forestry falls within Section 2(j).

4. The Intervener submits that the test stated in paragraphs 140 to 144 of the opinion of Krishna Iyer, J. in *Bangalore Water Supply* lays down the correct law.

5. The said test gives wide amplitude to the expression "industry" under Section 2(j), in consonance with the legislative object and social welfare nature of the Act, aligns previous precedents, and

provides a workable standard for Labour Courts and Industrial Tribunals.

6. The Intervener submits that although the definition of "industry" under Section 2(p) of the Industrial Relations Code, 2020 broadly reflects the formulation adopted in *Bangalore Water Supply*, certain exclusions introduced under Section 2(p)(ii) depart from the principles laid down in that judgment.

7. These exclusions are based on the character of the institution or the identity of the employer rather than the nature of the activity performed, which directly contradicts the functional approach affirmed by the Constitution Bench and thereby warrant constitutional scrutiny.

1. ISSUES FRAMED FOR REFERENCE (ORDER DT. 16.01.2026)

Issue (i): Whether the test laid down in paragraphs 140 to 144 in the opinion of Krishna Iyer, J. in *Bangalore Water Supply* correctly states the law; and whether the 1982 Amendment Act and the Industrial Relations Code, 2020 affect the interpretation of "industry" under the principal Act

8. The interpretation or "obfuscation" [as per Krishna Iyer, J] of the definition of "industry" under Section 2(j), led to inconsistent decisions prior to 1978 and eventually the reference to the Seven-Judge Bench and its judgment in *Bangalore Water Supply*.

9. Prior to the decision in *Bangalore Water Supply*, judicial interpretation of Section 2(j) produced inconsistent results - some decisions emphasised profit motive or commercial character, while others focused on the organised nature of the activity and the existence of employer-employee cooperation.

10. Earlier authorities such as ***D.N. Banerji v. P.R. Mukherjee*, *Hospital Mazdoor Sabha*, [AIR 1953 SC 58]** and other cases reflected the understanding that the expression "industry" must

be interpreted broadly in order to give effect to the legislative objective of regulating industrial relations and resolving disputes between employers and workmen.

11. On the other hand, decisions such as ***University of Delhi [(1964)2 SCR 703], Madras Gymkhana Club [(1968) 1 SCR 742]*****, and *Safdarjung Hospital (6-J) [(1970)1 SCC 735]*** placed emphasis on the nature of the institution, the professional character of the activity, or the absence of profit motive.

12. The Court in *Bangalore Water Supply* reconciled these divergent opinions by adhering closely to the statutory language, and formulating a clear test for identifying an industry, commonly referred to as the "triple test", whereby: the activity must be systematic, organised by co-operation between employer and employee, and for the production, supply or distribution of goods or services to satisfy human wants or wishes, not being merely spiritual or religious.

13. The Court emphasised that the interpretation must remain anchored in the language of Section 2(j) and sought to give effect to the words used thereunder, especially, "undertaking", "service", "employment" and "industrial occupation or avocation of workmen".

14. Such an approach accorded with the scheme of the Act. The Court held that the ideology of the Act being industrial peace, regulation and resolution of industrial disputes between the employer and workmen, the range of this legislative object must inform the statutory definition.

15. The Court emphasised that profit motive and capital investment are not determinative, as the statutory definition contains no such requirement and therefore cannot be restricted by importing such limitations. The Court further articulated the dominant nature test, particularly where an undertaking performs multiple functions. In such cases, the dominant character of the enterprise determines whether it qualifies as an industry.

16. Importantly, the judgment laid down a workable standard while at the same time it did not create unlimited inclusion. The Court explicitly recognised exclusions such as domestic service, purely spiritual or religious activities, and core sovereign functions of the State from the purview of Section 2(j).

17. The Industrial Disputes (Amendment) Act, 1982, though enacted, was never brought into force in respect of the substituted definition of "industry". Consequently, it has no operative effect on the interpretation of Section 2(j).

18. In the 2005 judgment in *Jai Bir Singh*, the Court observed that since the 1982 amended definition was not brought into force, the stand of the Union was that no alternative Industrial Disputes Resolution Forums could be created for the excluded categories. That circumstance shows that a narrower definition of "industry" directly affects access to labour adjudication.

19. The interpretation of the expression "industry" under the principal Act has thus continued to be governed by the principles laid down in *Bangalore Water Supply*.

20. Section 2(p) of the Industrial Relations Code, 2020 which came into force on 21.11.2025 introduces express statutory exclusions to the definition of "industry" under Section 2(p)(ii), namely: (i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; (ii) any activity relatable to the sovereign functions, including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; (iii) any domestic service; (iv) any other activity as may be notified by the Central Government.

21. By way of Section 2(p)(ii), Parliament has enacted legislation that effectively nullifies or overrides the binding interpretation of "industry" laid down by the Seven-Judge Constitution Bench, by excluding entire categories of establishments in a manner inconsistent with the functional and dominant-nature tests laid down therein.

22. The exclusions have the effect of extinguishing statutory protections for large classes of workers in a manner

inconsistent with constitutional guarantees. The practical consequence is that workers employed in establishments such as charitable hospitals, educational institutions, and welfare organisations are denied access to the primary statutory machinery for the settlement of industrial disputes. This results in unequal treatment between similarly situated workers and undermines the guarantee of equality under Article 14. Such workers are also deprived of the ability to challenge illegal termination, retrenchment, or unfair labour practices before Labour Courts and Industrial Tribunals, thereby infringing their right to livelihood and access to justice under Article 21 of the Constitution.

23. The validity and constitutionality of these statutory exclusions under Section 2(p)(ii) are directly in issue before this Hon'ble Court.

24. In any event, the Industrial Relations Code, 2020 which came into force on 21.11.2025, operates prospectively and cannot retrospectively alter rights that accrued under the Industrial Disputes Act regime. The doctrine against retrospective deprivation of vested rights is well established, as recognised in ***Shiv Shakti Coop. Housing Society v. Swaraj Developers*** **[(2003) 6 SCC 659].**

25. Accordingly, the interpretation of "industry" settled in *Bangalore Water Supply* continues to govern disputes arising under the Industrial Disputes Act, and the Code therefore does not affect the interpretation of the expression "industry" for the period during which the principal Act governed industrial relations.

Issue (ii): Whether social welfare activities and schemes undertaken by Government Departments or instrumentalities can be treated as "industrial activities" under Section 2(j)?

26. *Bangalore Water Supply* clearly held that a welfare or charitable object does not, by itself, take an activity outside Section 2(j). Nor does the fact that the employer is the State or a statutory body.

27. Even the authorities prior to *Bangalore Water Supply* show that municipal services, hospitals and similar public activities were

treated as industrial, when they were carried on in an organised manner with the aid of labour.

28. The present reference itself arose because one line of authority held social forestry to be covered and another took a different view. In the Order dated 31.01.2002, the Court expressly framed the question whether the Social Forestry Department, being a welfare scheme of the Government, is an “industry” or not, and referred the matter as a question of considerable public importance.

29. The correct principle is that the Court must look to the nature of the activity undertaken, not merely to its public or welfare object. Consequently, social welfare activities or schemes undertaken by government departments or statutory bodies would fall within Section 2(j) where the functional test is satisfied.

30. The dominant-nature test is also instructive, whereby welfare schemes, service delivery, development work, public utilities, municipal administration, social forestry, health services and similar activities do not become sovereign merely because they are carried on by the State.

31. Otherwise, every welfare activity of the State would stand outside the Act, and the workmen engaged in such activities would be denied the benefit of the machinery created by the statute. That would run wholly contrary to the legislative object and beneficial nature of the Act as piece of social welfare legislation, as well-recognised in *Bangalore Water Supply*.

32. Section 2(p)(i), however, excludes institutions owned or managed by organisations wholly or substantially engaged in charitable, social or philanthropic service. Such an exclusion is difficult to reconcile with *Bangalore Water Supply*, which requires examination of the nature of the activity rather than of the institution.

33. Under Section 2(p)(i), the question becomes whether the institution answers a description such as charitable, social or philanthropic. Such a clause can take out of the statutory fold charitable hospitals, trust-run care institutions, welfare institutions, service establishments and other undertakings employing regular and organised labour, even though the actual

labour-relation is no different from that in a commercial establishment.

34. The words “wholly or substantially” also add to the difficulty. Many institutions are maintained through mixed sources, including grants, fees, donations, contracts and service charges. The term “substantially” is capable of broad application, thereby creating the risk of inconsistent application and arbitrary classification.

35. The proper approach remains the application of the functional and dominant nature tests laid down in *Bangalore Water Supply*.

36. Section 2(j) does not limit its scope to commercial enterprises. Profit motive, charitable character, or governmental identity are not determinative criteria for exclusion. Each activity must be examined on its facts, applying the functional test. The determinative factor is not the welfare character of the institution, but the nature of the activity performed. The fact that the activity is undertaken by the State, or that it is motivated by welfare considerations rather than profit, does not automatically exclude it from the purview of the Act. Workers employed in government-run hospitals, transport services, sanitation systems, or other organised schemes are no less dependent on their employment than workers in private undertakings. Denying them access to the statutory dispute resolution framework solely because the enterprise is a welfare or charitable institution, would defeat the protective purpose of the legislation and violate equality and non-arbitrariness under Articles 14 and 16. Accordingly, social welfare character alone does not determine exclusion.

37. Thus, social welfare activities and schemes undertaken by Government Departments or instrumentalities are not exempted and would be construed as industrial activities for the purpose of Section 2(j), if they satisfy the test laid down in *Bangalore Water Supply*.

Issue (iii): What State activities are covered by the expression “sovereign function”, and whether such activities will fall outside Section 2(j)

38. *Bangalore Water Supply* drew a clear distinction between sovereign functions as strictly understood, and welfare or economic activities carried on by the State.

39. The Court made it clear that welfare activities or economic ventures undertaken by the State do not become sovereign merely because they are performed by government agencies. Thus, welfare schemes, service delivery, development work, public utilities, municipal administration, social forestry, health services and similar activities do not become sovereign merely because they are carried on by the State.

40. Where the State engages in activities that are essentially economic, commercial, or service-oriented, and employs labour in an organised structure, it acts in the capacity of an employer and cannot claim sovereign immunity from labour regulation.

41. The dominant-nature test ensures that even within departments performing sovereign functions, if there exist units or activities that are severable and satisfy the functional test, those units may still qualify as industries under Section 2(j).

42. The proper meaning of sovereign function is confined to such primary and inalienable functions of the State as legislation, administration of justice, maintenance of public order in the strict sense, defence and kindred functions, and cannot be expanded to cover welfare administration, public utilities, or service delivery activities undertaken by the State.

43. If the concept of sovereign function is interpreted widely, the exception will swallow the rule and large classes of workmen employed by the State or public bodies will be taken outside the purview of the Act.

44. However, Section 2(p)(ii) Clause (ii) of the Code excludes any activity of the appropriate Government relatable to sovereign functions. The statutory language is wider than the narrow sovereign exception recognised in *Bangalore Water Supply*.

45. The expression “relatable to” is capable of wide extension. If the phrase is given a broad meaning, it may take in welfare schemes, research bodies, service institutions, development activities and other public undertakings which would otherwise satisfy the ordinary test of “industry”.

46. Such a reading would run contrary with *Bangalore Water Supply* as the exception there is for sovereign functions strictly understood, not for all activities connected with government. The said Clause (ii), therefore, must be construed as confined to the narrow field of sovereign functions in the strict sense. It should not be used to exclude welfare or service activities of the State which are in substance industrial.

ISSUE (iv): Any other issues that may arise during hearing

47. The Constitution Bench judgment in Bangalore Water Supply has governed the interpretation of "industry" for several decades. Industrial adjudication, labour relations, and collective bargaining structures across both public and private sectors have developed in reliance upon the principles laid down therein. Any reconsideration of such a foundational precedent must therefore be approached with caution.

48. The threshold for revisiting a Seven-Judge Bench decision must be upon the demonstration of manifest error, and not merely an alternative interpretation.

49. In this context, legislative developments must also be examined carefully to determine whether they are consistent with, or in derogation of, the law declared in *Bangalore Water Supply*. Thus, the exclusions introduced under Section 2(p)(ii) of the Industrial Relations Code, 2020 require close constitutional scrutiny.

50. The Intervener also submits that scrutiny is also warranted for Section 2(p)(ii)(iv), which permits the exclusion of "any other activity" by notification of the Central Government.

51. The definition of "industry" constitutes the threshold for access to the entire industrial adjudicatory framework. A power to exclude activities by executive notification is, in substance, a power to withdraw statutory remedies from entire classes of undertakings and workmen. Such a provision cannot be interpreted expansively, as it would allow the broad statutory definition to be curtailed through executive action. Any delegated power to exclude activities must satisfy constitutional requirements of intelligible differentia, rational nexus,

proportionality, and non-arbitrariness or else would risk excessive delegation and arbitrary denial of statutory remedies.

52. Accordingly, this clause must be construed strictly and exercised only within narrow limits consistent with the scheme of labour legislation and the objective of industrial adjudication.

53. The present reference therefore raises important considerations relating not only to statutory interpretation but also to constitutional guarantees, including equality before law, freedom of association, and the right to livelihood.

54. It is respectfully submitted that these considerations underscore the need for caution, clarity, and continuity in resolving the present reference so as to preserve stability in labour jurisprudence and protect workers' constitutional rights.

55. The interpretation of the expression "industry" must also be guided by the Directive Principles of State Policy, particularly Articles 38, 39, 41, 42, 43 and 43A of the Constitution, which require the State to promote social justice, secure adequate livelihood and ensure humane conditions of work. Labour legislation, such as the Industrial Disputes Act, constitutes a primary statutory mechanism for giving effect to these constitutional objectives.

56. Further, India's obligations under international labour standards recognised by the International Labour Organization, read with the directive in Article 51(c) to respect international law, reinforce the need for an interpretation that preserves workers' access to collective labour rights and effective dispute resolution.

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AARTHI RAJAN
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SECTION: III-A

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. _____ OF 2026
IN
CIVIL APPEAL NO.897 OF 2002

IN THE MATTER OF:

STATE OF U.P. …APPELLANT

VERSUS

JAI BIR SINGH …RESPONDENT

AND IN THE MATTER OF:

THAMATE, CENTRE FOR RURAL EMPOWERMENT
1ST BLOCK 2ND MAIN KUVEMPUNAGAR,
TUMKUR, 572103
REPRESENTED BY ITS SECRETARY
MR. K.B. OBALESHA …APPLICANT / IMPLEADER

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IN THE SUPREME COURT OF INDIA
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REPRESENTED BY ITS SECRETARY
MR. K.B. OBALESHA …APPLICANT/IMPLEADER

WRITTEN SUBMISSIONS ON BEHALF OF THE IMPLEADING APPLICANT

1. These written submissions are being filed in compliance with the order of this Hon'ble Court dated 12.10.2023 on behalf of the Applicant which is an organisation that seeks to represent the interest of sanitation workers as a key workforce in the present Reference.

2. The reference order in ***State of U.P. v. Jai Bir Singh***, (2005) 5 SCC 1 16.2.2026 referred the landmark decision in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa*** (1978) 2 SCC 213 (hereinafter referred to as "Bangalore Water Supply case") to a 9-judge bench to reconsider the interpretation of the expression "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. In this regard the following submissions are made:

I. <u>'Industry' has wide import; would cover the activities of the government and local authorities as well:</u>

(i) In the *Bangalore Water Supply* case, it was held that the Government and its Departments while exercising its 'sovereign functions' have been excluded from the definition of 'industry'.

(ii) On the question of 'what is sovereign function', there is no unanimity in the different opinions expressed by the judges in the Bangalore Water case. It is submitted that all welfare activities undertaken by the State in discharge of its obligation under the Directive Principles of State Policy contained in Part IV of the Constitution are 'sovereign functions'. To restrict the meaning of 'sovereign functions' to only specified categories of so called 'inalienable functions' like Law and Order, Legislation, Judiciary, Administration and the like is uncalled for.

(iii) In *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Ors.,* this Hon'ble Court held that 'industry" under Section 2 (j) of the Industrial Disputes Act 1947 has wide import. Industry is one where there is systematic activity organised by co-operation between employer and employee for production and distribution of goods and services calculated to satisfy human wants and wishes. The true focus is functional, and the decisive test is the nature of the activity with special emphasis on employer-employee relationship. It also held that an organization does not cease to be trade and business merely because it is engaged in philanthropic activities. J. Krishna Iyer laid down the dominant nature test to be as follows:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(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) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

(iv) In the context of whether the government should be covered or not, it was held:

> *"There is no justification for excepting the categories of public utility activities undertaken by the Government in the exercise of its inalienable function,., under the constitution, call it regal or sovereign or by any*

other name, from the definition of "industry". If it be true that one must have regard to the nature of the activity and not to who engages in it, it is beside the point to enquire whether the activity is undertaken by the State, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions…….If the State's inalienable functions are excepted from the sweep of the definition contained in section 2(j), one shall have it is the nature of the activity is an industry. Indeed, in this respect, it should make no difference whether on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions. If the water supply and sewerage schemes or fire fighting establishments run by a Municipality can be industries sought to be the manufacture of coins and currency, arms and ammunition and the winning of oil and uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries."

(v) Thus, an organisation would not cease to be industry merely because it is the government / local urban authorities and bodies.

(vi) It also held that welfare activities of an economic nature undertaken by the Government come within the meaning of industry - even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within Section 2 (j) of the Act.

(vii) This Court therefore allowed for inclusion of welfare activities or economic adventures of the government. It also held that units that are substantially severable - can be held to be industry. If there are industrial units severable from the essential functions and possess an entity of their own, the

employees of those units are workmen and those undertakings are industries.

(viii) Relying on all these observations, it was held that the Bangalore Water Supply and Sewerage Board ("BWSSB") was an industry.

(ix) In fact it is often in many cases the BWSSB itself which hires and engages persons for carrying out manual scavenging and hazardous cleaning, and therefore any organization including the government or local bodies which engage even persons for manual scavenging and hazardous cleaning, should be brought under within the purview of the definition of 'industry'.

II. <u>Sanitation workers form a key workforce and need to be covered under the definition of 'industry':</u>

(i) It is submitted that manual scavenging and hazardous cleaning is an activity that continues widely in the country, despite being legally prohibited by the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 ("PEMSRA"). This Act mandates the government to not only work towards eradicating manual scavenging but also ensure rehabilitation and welfare of persons working in manual scavenging. However, persons are being continued to be employed and engaged as manual scavengers and their families continue to be denied rehabilitative benefits due to the non-implementation of the PEMSRA and the Rules thereunder. Falling outside the ambit of this Act are sanitation workers and those engaged in hazardous cleaning.

(ii) It is submitted that Courts have recognized that sanitation workers occupy a unique position as workers. In *Municipal Corporation of Greater Mumbai v. Kachara Vahtuk Shramik Sangh* (2023:BHC- AS:40047), the Bombay High Court held that the case of sanitation workers is *sui generis* and cannot be compared to ordinary contract labour disputes due to their *"extreme backwardness tied up with the caste system and lowly menial work they are forced to engage in"*

(iii) Sanitation work continues to be a caste-based occupation and the central government alone employs over 32 lakh employees as sanitation workers across 80 ministries as per the latest Department of Personnel and Training Report 2024-25. The same report highlights that 66% of the Group-C sanitation workers employed in the Central Government belong to SC, ST and OBC groups. A staggering 92% of workers cleaning urban sewers and septic tanks employed by urban local bodies are from SC, ST and OBC groups.

(iv) It is submitted that not only are workers engaged for hazardous cleaning and manual scavenging by private parties, they are also engaged by government authorities and local bodies for manual and hazardous cleaning of sewers. Sanitation is listed as Entry 6 in List II ("State List") of the Seventh Schedule of the Constitution of India. Additionally, it is listed as Entry 23 in the Eleventh Schedule and Entry 6 in the Twelfth Schedule of the Constitution of India. Pursuant to this constitutional scheme, sanitation services in India are provided by Urban Local Bodies, Gram Panchayats and/or parastatal bodies like Sewerage Boards.

(v) Sanitation work is inherently hazardous, often proving to be fatal. A recent audit of 54 cases of deaths of sanitation workers

commissioned by the Government of India found that in 47 cases, the workers were not provided with safety gears or mechanical equipment. In 49 out of 54 cases, the workers were not wearing any safety kit at the time of death. Collective bargaining mechanisms provided under the IDA, 1947 are important means for such precariously placed workers to seek improvement in their working conditions and mitigate occupational and health risks associated with their work. For sanitation workers, this was the primary legal shield that allowed them to be recognized as "workmen" rather than "volunteers" or "civic help".

(vi) If government departments are not covered by the Industrial Disputes Act and do not come within the definition of 'industry' to cover persons engaged for manual scavenging and hazardous cleaning, these workers will have no remedy as workmen, apart from access to criminal law, which is only when the worker has died due to hazardous cleaning. Removing Government departments from the sweep of 'industry' will create a statutory vacuum leaving workers of government departments without a remedy.

(vii) It is submitted that the ***Bangalore Water Supply*** judgment was based on constitutional concerns for workers reflected in Articles 38, 39, and 43. Article 42 mandates the State to secure just and humane conditions of work. Sanitation workers engaged in hazardous cleaning face the highest occupational risks, including deaths from toxic gases in sewers, which occur every five days in India. A restrictive definition of 'industry' would thus deny them the protections of industrial and labour law and hence the interpretation needs to be broad to include them.

(viii) As held by Justice Krishna Iyer in the Bangalore Water Supply case, as the ID Act is a beneficial legislation, while the peaceful co-existence of employees and employers has to be emphasized, it is a also a legislation that focuses on the welfare of the weaker sections and he stated as follows:

"To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects Labour, promotes their contentment and regulates situations of crisis and tension where production may be imperiled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both-not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit but also its sense. One of the vital concepts on which the whole statute is built, is 'industry' and when we approach the definition in Section 2 (j), we must be informed by these values."

III. Thus it is submitted that the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in Bangalore Water Supply case to determine if an undertaking or enterprise falls within the definition of "industry" lays down is correct law.

IV. It is also submitted that social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities should in fact be construed to be “industrial activities” for the purpose of Section 2(j) of the ID Act.

FILED BY:

(KUMAR DUSHYANT SINGH)
ADVOCATE FOR THE APPLICANT/IMPLEADERS

SETTLED BY:

JAYNA KOTHARI
SENIOR ADVOCATE

PLACE: NEW DELHI
DATE: 05.03.2026

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

IN THE MATTER OF:-

STATE OF UTTAR PRADESH ... APPELLANT

VERSUS

JAI BIR SINGH ...RESPONDENT

AND WITH

CIVIL APPEAL NO. 4646 OF 2007
[SLP (CIVIL) NO.3318 OF 2007]

IN THE MATTER OF:

STATE OF HARYANA …APPELLANT

VERSUS

RAJESH …RESPONDENT

WRITTEN SUBMISSION BY DR. K.S. CHAUHAN, SENIOR ADVOCATE ON BEHALF OF THE RESPONDENT

MOST RESPECTFULLY SHOWETH:

ISSUES:

a. Whether the welfare activities performed by the State could be adjudged as "sovereign functions of the State" and/or whether the workers performing functions as a worker could be denied the statutory protection which are available under Section 2 (j) of the Industrial Dispute Act, 1947, or not?

b. Whether the protection of Section 2 (j) of the Industrial Dispute Act, 1947 could be denied to a worker who perform his duties in a public sector or department of the state and whether such activity of the State or its instrumentalities could be adjudged as "sovereign functions of the state" to deprive the statutory benefits in the facts and circumstances of the present case, and, or not?

Before the issues are examined, the provisions of articles 12, 19(1) (g), 38, 39 (b) & (c), 46, 48A, 298, 301 to 305, 307, 309 of the Constitution of India and other legal provisions relevant or related to the definition of 'industry', and such other provisions, are reproduced hereinbelow:

I. CONSTITUTIONAL PROVISIONS:

Definition of 'State' under Article 12 of the Constitution of India:

Article 12. Definition (of State): In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities.

Article 19. Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right:

(g)- to practise any profession, or to carry on any occupation, trade or business.

Article 38. State to secure a social order for the promotion of welfare of the people.—[1][(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[2][(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

Article 39. Certain principles of policy to be followed by the State. —The State shall, in particular, direct its policy towards securing—

……

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

……

Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. —The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

[1] Article 38 renumbered as clause (1) thereof by the Constitution (44th Amendment) Act, 1978, Sec.9 (w.e.f. 20.06.1979).
[2] Ins. by the Constitution (44th Amendment) Act, 1978, Sec.9 (w.e.f. 20.06.1979).

[3][**Article 48A. Protection and improvement of environment and safeguarding of forests and wildlife.** —The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

[4][**Article 298. Power to carry on trade, etc**.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse. —Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free**.**

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.—Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between

[3] Ins. by the Constitution (42nd Amendment) Act, 1976, Sec.10 (w.e.f. 03.01.1977).
[4] Subs. by the Constitution (7th Amendment) Act, 1956, Sec.20, for Article 298 (w.e.f. 01.11.1956).

one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

304. Restrictions on trade, commerce and intercourse among States. —

Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States 1 [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

[5][305. Saving of existing laws and laws providing for State monopolies. —

Nothing in Articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in Article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of Article 19.]…

307. Appointment of authority for carrying out the purposes of articles 301 to 304.—Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of Articles

[5] Subs. by the Constitution (4th Amendment) Act, 1955, Sec.4, for Article 305, (w.e.f. 27.04.1955).

301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary. ……

309. Recruitment and conditions of service of persons serving the Union or a State.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate 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:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor [6][***] of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

II. OTHER LEGAL PROVISIONS

Before the issues are examined, other legal provisions relevant or related to the definition of 'industry' under Sections 2(j), 2(k), 2(ka) and 2(s) of the Industrial Disputes Act, 1947, Section 2(u) of the Competition Act, 2002, and Section 2(42) of the Consumer Protection Act, 2019, and such other provisions, are reproduced hereinbelow:

1. Industrial Disputes Act, 1947

Section 2. Definitions. —In this Act, unless there is anything repugnant in the subject or context, **…**

[7]**[(j) "industry"** means any business, trade, undertaking, manufacture or calling of employers and includes any calling,

[6] The words "or Rajpramukh" omitted by the Constitution (7th Amendment) Act, 1956, Sec.29 and Sch., for Article 305, (w.e.f. 01.11.1956).

[7] 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

service, employment, handicraft, or industrial occupation or avocation of workmen;

Section 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;

[8][**(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

(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;

[8] Ins. by Act 46 of 1982, s. 2 (w.e.f. 21-8-1984).

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;]

[9][(s) **"workman**" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [10] [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

2. <u>The Competition Act, 2002[11] (No. 12 OF 2003)</u>

2. Definitions. -In this Act, unless the context otherwise requires,—…….

(u) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging,

[9] Subs. by Act 46 of 1982, s. 2 for "clause (s)" (w.e.f. 21-8-1984).

[10] Subs. by Act 24 of 2010, s. 2, for "one thousand six hundred rupees" (w.e.f. 15-9-2010).

[11] This Act of Parliament received the assent of the President on the 13th of January 2003.

entertainment, amusement, construction, repair, conveying of news or information and advertising;

3. The Consumer Protection Act, 2019

Section 2. Definitions……..

(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

III. CASE LAWS ON SOVEREIGN FUNCTIONS

1. Bangalore Water-Supply & Sewerage Board, etc. v. R. Rajappa and Ors.[12]

The Seven Judges Bench in Bangalore Water-Supply & Sewerage Board, speaking through V R Krishna Iyer J.[13], has held that:[14]

"143. "**The dominant nature test"**, [pp. 283 and 284, para 143]:
(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case[15] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur[16], will be true test. The whole undertaking will be 'industry" although those who are not 'workmen' by definition may not benefit by the status.
(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.*

[12] Bangalore Water-Supply & Sewerage Board, etc. v. R. Rajappa and Ors.1978 (2) SCC 213: 1978 (3) SCR 207: AIR 1978 SC 548.
[13] V R Krishna Iyer J.(for himself and Bhagwati and Desai JJ.)
[14] Bangalore Water-Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213, pp.283-284.*
[15] University of Delhi v. Ram Nath, 1964 (2) SCR 703.
[16] Corporation of City of Nagpur v. Employees, 1960 (2) SCR 942.

(c) Even in departments ***discharging sovereign functions****, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).*
(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.
We over-rule Safdarjung[17], Solicitors' case[18], Gymkhana[19], Delhi University[20], Dhanrajgirji Hospital[21] and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha[22] is hereby rehabilitated."

BEG, C.J. has agreed with the line of thinking adopted and the conclusions reached by **Krishna lyer J.** [23]The reasons for this agreement and to indicate to a problem where relevant legislation leaves so much for determination by the Court as to perform a function very akin to legislation.

147. My learned brother has relied on what was considered in England a somewhat unorthodox method of construction in ***Seaford Court Estates Ltd. v. Asher***[24], where Lord Denning, L.J., said:

"When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

[17] Safdarjung hospital v. Kuldip Singh Sethi,1970 (1) SCC735
[18] National Union of Commercial Employees v. M. R. Meher (Solicitors' case)1962 Supp. (3) SCR 157.
[19] Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, [1968] 1 SCR 742: AIR 1968 SC 554.
[20] University of Delhi v. Ram Nath, 1964 (2) SCR 703.
[21] Dhanrajgirji Hospital v. workmen, 1975 (4) SCC621
[22] State of Bombay and Ors v. The Hospital Mazdoor Sabha, [1960] 2 SCR 866.
[23] Bangalore Water-Supply & Sewerage Board v. R. Rajappa,*1978 (2) SCC 213,* p.284.
[24] Seaford Court Estates Ltd. v. Asher, [1949] 2 All. E. R. 155, p. 164.

When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be "a naked usurpation of the legislative function under the thin disguise of interpretation'. **Lord Morton** (with whom **Lord Goddard** entirely agreed) observed: "These heroics are out of place" and **Lord Tucker**, said "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by **Denning, L.J.**, were to prevail".

148. Perhaps, with the passage of time, what may be described as the extension of a method resembling the "arm-chair rule" in the construction of wills, judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In ***M. Pentiah v. Verramallappa***[25], **Sarkar, J**. approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of "industry" is left in the state in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties raised.

149. In his heroic efforts, my learned brother Krishna Iyer, if I may say so with great respect, has not discarded the tests of industry formulated in the past. Indeed, he has actually restored the tests laid down by this Court in **D. N. Banerji's** case[26], and, after that, in the **Corporation of the City of Nagpur v. Its Employees,**[27]and **State of Bombay v. The Hospital Mazdoor Sabha**[28], to their pristine glory. My learned brother has, however, rejected what may appear, to use the word employed recently by an American Jurist, "excrescences" of subjective notions of judges which may have blurred those tests.

163. I would also like to make a few observations about the so called "**sovereign functions"** which have been placed outside the field of industry. I do not feel happy about the use of the term "**sovereign**" here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of

[25] M. Pentiah v. Verramallappa, A.I.R. 1961 S.C. 1107, p.1115: 1961(2) SCR 295.
[26] D. N. Banerji v. P. R. Mukherjee, 1953 SCR 302: AIR 1953 SC 58.
[27] Corporation of City of Nagpur v. Employees, 1960 (2) SCR 942: AIR 1960 SC 675.
[28] State of Bombay and Ors v. The Hospital Mazdoor Sabha, [1960] 2 SCR 866: AIR 1960 SC 610.

its own as I suggested in **Kesavananda Bharati's case** [29] Supported by a quotation from *Ernest Barker's "Social and Political Theory"*. Again, the term "*Regal*", from which the term "*sovereign*" functions appear to be derived, *seems to be a misfit in a Republic* where the citizen shares the political sovereignty in which he has even a legal share; however small, in as much as he exercises the right to vote. What is meant by the use of the term "*sovereign*", in relation to the activities of the State, is more accurately brought out by using the term *"governmental"* functions although there are difficulties here also in as much as the Government has entered *largely* now fields of *industry*. Therefore, only those services which are governed by separate rules and Constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.

164. I am impressed by the argument that *certain public utility services* which are carried out by governmental agencies or corporations are treated by the Act itself as within the sphere of industry. If express rules under other enactments govern the relationship between the State as an employer and its servants; as employees it may be contended, on the strength of such provisions, that a particular set of employees are outside the scope of the Industrial Disputes Act for that reason. The special excludes the applicability of the general. We cannot forget that we have to determine the meaning of the term 'industry' in the context of and for the purposes of matters provided for in the Industrial Disputes Act only.

165. I have contented myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of my learned brother *Iyer*, and I also endorse his reasoning almost wholly but even more because the opinion I have dictated just now must be given today if I have to deliver- it at all. From tomorrow, I cease to have any authority as a Judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those on what are known as "*sovereign*" *functions*.

Chief Justice M H Beg has also cited The **State of Rajasthan v. Mst. Vidhyawati**[30] has stated "…under the Constitution we

[29] Kesavananda Bharati v. State of Kerala, 1973 Supp. SCR 1.
[30] The State of Rajasthan v. Mst. Vidhyawati, 1962 Supp (2) SCR898, p.1002.

have established a welfare state, whose functions are not confined only to maintaining law and order but extend to engaging in all activities including industry, public transport, state trading," and **Rajasthan State Electricity Board v. Mohan Lal**[31] to show that the State today increasingly undertakes commercial functions and economic activities and services, as part of its duties in a welfare state. The State as defined by Article 12, has the right to carry on trade or business as mentioned in Art. 19(1)(g) of the Constitution, and Art. 298 is empowered to carry on any trade or business, and one of the Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The Board under the Electricity Supply Act is, required to carry on some activities of the-nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art. 12.

"168. Hence, to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulate tests of "industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon.

169. For the reasons given above, I endorse the opinion and the conclusions of my learned brother Krishna Iyer."

ORDER by **CHANDRACHUD, J** (for himself, **Jaswant Singh** and **Tulzapurkar JJ**.).

170. We are in respectful agreement with the view expressed by **Krishna Iyer, J.** in his critical judgment that the Bangalore Water Supply and Sewerage Board appeal should be dismissed. We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned Brother has dwelt.

The following judgments were delivered on April 7, 1978.

[31] Rajasthan State Electricity Board v. Mohan Lal, 1967(3) SCR 377, pp.385-386.

CHANDRACHUD, C. J.-By a short order dated February 21, 1978, which I pronounced on behalf of myself and my learned Brethren' Jaswant Singh and Tulzapurkar, I had expressed our agreement with the view taken by Brother **Krishna Iyer** on behalf of himself and three other learned Brethren that the Bangalore Water Supply & Sewerage Board's appeal be dismissed. I had stated that the area of concurrence or divergence with the rest of the judgment will, if necessary, be indicated later.

172. I have now the added advantage of knowing the divergent view expressed by Jaswant Singh and Tulzapurkar, JJ. on certain aspects of the matter. Almost every possible nuance of the question as to what is comprehended within "Industry" and what ought to be excluded from the sweep of that expression has received consideration in the two judgments. Having given a further thought to the frustrating question as to what falls within and without the statutory concept of 'industry' I am unable to accept, respectfully, the basis on which Jaswant Singh and Tulzapurkar, JJ. have expressed their dissent.

173….. The first question which has engaged the attention of every court which is called upon to consider whether a particular activity is '*industry'* is whether, the definition should be permitted to have its full sway embracing within its wide sweep every activity which squarely falls within its terms or whether, some limitation ought not be read into the definition so as to restrict its, scope as reasonably as one may, without doing violence to the supposed intention of the legislature……. An argument based on this principle was rejected by Gajendragadkar, J., while speaking on behalf of the Court, in **State of Bombay v. The Hospital Mazdoor Sabha**[32]. A group of five hospitals called the J. J. Hospital, Bombay, which is run and managed by the State Government in order to provide medical relief and to promote the health of the people was held in that case to be an industry.

174. The Court expressed its opinion in a characteristically clear tone by saying that if the object and scope of the Industrial Disputes Act are considered, there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining 'industry' in section 2 (j) of the Act. The object of the Act, the Court said, was to make, provision for the investigation and settlement of

[32] State of Bombay v. The Hospital Mazdoor Sabha, 1960 (2) SCR 866.

industrial disputes, and the extent and scope of its provisions would be realised if one were to bear in mind the definition of 'industrial dispute' given by s. 2(k), of 'wages' by s. 2(rr), 'workman' by s. 2(s), and of 'employer by s. 2(g). The Court also thought that in deciding whether the State was running an industry, the definition of 'public utility service' prescribed by section 2(n) was very significant and one bid merely to glance at the six categories of public utility services mentioned therein to realise that in running the hospitals the State was running an industry….

176. In the **Hospital Mazdoor Sabha**[33]the Court rejected, on concession, two possible limitation on the meaning of 'industry' as defined in section 2(j) of the Act : firstly, that no activity can be an industry unless accompanied by a profit motive and secondly, that investment of capital is indispensable for treating an activity as an industry. The Court also rejected, on examination, the limitation that a quid pro quo for services rendered is necessary for bringing an activity within the terms of section 2(j). If the absence of profit motive was immaterial, the activity, according to the Court, could not be excluded from section 2(j) merely because the person responsible for the conduct of the activity accepted no return and was actuated by philanthropic or charitable motives. The Court ultimately drew a line at the point where the regal or sovereign activity of the Government is undertaken and held that such activities of the Government as have been pithily described by **Lord Watson** as *"the primary and inalienable functions of a constitutional Government"*[34], could be stated negatively as falling outside the scope of section 2(j)..

178. On a careful consideration of the question I am of the opinion that **Hospital Mazdoor Sabha** was *correctly* decided in so far as it held that the **J. J. group of hospitals** was an industry but, respectfully, the same, cannot be said in regard to the view

[33] State of Bombay v. The Hospital Mazdoor Sabha, 1960 (2) SCR 866.

[34] Lord Watson in **Coomber (Surveyor of Taxes) v Justices of County of Berks**, (1883) 9 A.C. 61, p.74:(1883-1890)2 TC 1 (HL)has observed that functions such as administration of justice, maintenance of order and repression of crime are among the primary and inalienable functions of a constitutional Government. The observations of Issacs, J. in his dissenting judgment in **Federal State School Teachers' Association of Australia v. State of Victoria**, (1928-29) 41 C.L.R. 569, that regal functions are inescapable and inalienable and that they are legislative power, the administration of flaws and the exercise of judicial power, were also approved.

of the Court that certain activities ought to be treated as falling outside the definition clause….

181. ... Judged by these tests, I find myself unable to accept the broad formulation that a Solicitor's establishment cannot be an industry. A Solicitor, undoubtedly, does not carry on trade or business when he acts for his client or advises him or pleads for him, if and when pleading is permissible to him. He pursues a profession which is variously and justifiably described as learned, liberal or noble, But, with great respect, I find it difficult to infer from the language of the definition in section 2(j), as was done by this Court in ***The National Union of Commercial Employees v. M. R. Meher, Industrial Tribunal, Bombay***[35] that the legislature could not have intended to bring a liberal profession like that of an attorney within the ambit of the definition of industry. In Hospital Mazdoor Sabha[36] the Court, while evolving a working principle stated that an industrial activity generally involves, inter alia, the cooperation of the employer and the employee. That the production of goods or the rendering of material services to the community must be the direct and proximate result of such cooperation is a further extension of that principle and it is broadly by the application thereof that a Solicitor's establishment is held not to attract the definition clause.

182. The case of the clubs, on the present definition, is weaker still; and not only do I consider that the definition squarely covers them, except to the limited extent indicated by Brother Krishna Iyer in his judgment, but I see no justification for amending the law so as to exclude them from the operation of the industrial laws. …. And the argument that the activity of the clubs cannot be described as trade or business or manufacture overlooks, with respect, that the true test can only be whether the activity is organised or arranged in a manner in which a trade or business is normally organised or arranged.

183. On the remaining aspects of the case I have nothing useful to add to the penetrating analysis of the problem made by Brother Krishna Iyer in his judgment.

Jaswant Singh J. (for himself and Tulzapurkar, J.)[37] (partly dissenting)- It may be recalled that in the order dated February

[35] The National Union of Commercial Employees and Another v. M. R. Meher, Industrial Tribunal, Bombay, 1962 Supp (3) SCR 157: AIR 1962 SC 1080.

[36] State of Bombay v. The Hospital Mazdoor Sabha, 1960 (2) SCR 866.

[37] Bangalore Water-Supply & Sewerage Board v. R. Rajappa,*1978 (2) SCC 213, p. 299.*

21, 1978 pronounced by our learned brother, **Chandrachud, J.** (as he then was) on 'behalf of himself, brother **Tulzapurkar** and myself, expressing our respectful agreement with the view expressed by our learned brother **Krishna Iyer** that the *Bangalore Water Supply & Sewerage Board*[38] appeal be dismissed, it was stated that we would indicate the area of concurrence and divergence, if any, later on. Accordingly, we proceed to do that now.

185. The definition of the term "*industry*" as contained in Section 2(j) of the Industrial Disputes Act which is in two parts being vague and too wide as pointed out by ***Beg, C.J.*** and ***Krishna Iyer, J.,*** we have struggled to find out its true scope and ambit in the light of plethora of decisions of this Court which have been laying down fresh tests from time to time making our task an uphill one. However, bearing in mind the collocation of the terms in which the definition is couched and applying the doctrine of noscitur a sociis (which, as pointed out by this Court in State of Bombay v. The Hospital Mazdoor Sabha[39] means that, when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. 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, hospital 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.
The learned Judges have recommended for a legislative step in a comprehensive bill to clear up the fog and remove doubts…
The definition of industry by Justice Krishna Iyer which was concurred by all the Seven Judges and the two judges have

[38] Bangalore Water-Supply & Sewerage Board v. R. Rajappa,*1978 (2) SCC 213.*
[39] State of Bombay v. The Hospital Mazdoor Sabha, 1960 (2) SCR 866.

agreed with Jaswant Singh J. and Tulzapurkar J., have partly dissented on the extent of the obligations.

2. Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc.[40]

The relevant extracts of the three judges bench judgment are as under: -

"4. We, therefore, propose to examine the first question on the touch stone of what was held by this Court in *Bangalore Water-Supply case*[41]. A perusal of that judgment shows that the main judgment was written by **Krishna Iyer, J.** (on behalf of self, **Bhagwati and Desai, JJ**.). **Beg**, **CJ** endorsed the opinion and conclusions of **Krishna Iyer, J**. in a concurrent judgment giving his own reasons. Though **Tulzapurkar, J.** had stated in the order passed on the day the judgment was delivered (21.02.1978) that reasons for concurrence and divergence if any would be given later, no such reasons were given, **Chandrachud, J.** (as he then was put on record his reasons on 07.04.1978 by which date he had become Chief Justice. **Jaswant Singh, J.** also did the same.

5. The aforesaid shows that the conclusions reached by *Krishna Iyer, J.* had been endorsed fully by two other learned Judges and Beg. CJ., did the same but for different reasons. We would, therefore, confine our attention to the conclusions reached by *Krishna Iyer, J*. which appear at pp. 283 and 284, para 143 of the Report. The one which is relevant for our purpose is what finds place under serial titled IV "The dominant nature test", which was spelt out as below: [42] [pp. 283 and 284, para 143]:

> (a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case[43] or some departments are not productive of goods and services if isolated, even then, the

[40] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293: 1995 Supp 6 SCR 259: AIR 1996 SC 2898.
[41] Bangalore Water-Supply & Sewerage Board, etc. v. R. Rajappa and Ors*, 1978 (2) SCC 213: 1978 (3) SCR 207:* AIR 1978 SC 548.
[42] Bangalore Water-Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213, pp.283-284.*
[43] University of Delhi v. Ram Nath, 1964 (2) SCR 703.

predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur[44], will be true test. The whole undertaking will be 'industry" although those who are not 'workmen' by definition may not benefit by the status.

(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) Even in departments ***discharging sovereign functions****, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).*

(d) Constitutional and competently enacted legislative provisions may well be removed from the scope of the Act categories which otherwise may be covered thereby.

We over-rule Safdarjung[45], Solicitors' case[46], Gymkhana[47], Delhi University[48], Dhanrajgirji Hospital[49] and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha[50] is hereby rehabilitated."

Interpreting the above conclusions this Hon'ble court has further stated:

(It may be stated that it is in pursuance to what was stated under (d) above that the aforesaid amendment of 1982 was made which provided for exclusions of some categories, one of which is "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". This is exception No. (6) of the 9 mentioned in the amended definition)[51].

[44] Corporation of City of Nagpur v. Employees, 1960 (2) SCR 942.
[45] Safdarjung hospital v. Kuldip Singh Sethi,1970 (1) SCC735
[46] National Union of Commercial Employees v. M. R. Meher (Solicitors' case)1962 Supp. (3) SCR 157.
[47] Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, [1968] 1 SCR 742: AIR 1968 SC 554.
[48] University of Delhi v. Ram Nath, 1964 (2) SCR 703.
[49] Dhanrajgirji Hospital v. workmen, 1975 (4) SCC621
[50] State of Bombay and Ors v. The Hospital Mazdoor Sabha, [1960] 2 SCR 866.
[51] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, p. 298: 1995 Supp 6 SCR 259: AIR 1996 SC 2898.

7. As per the **Bangalore** Water-Supply case[52] **sovereign functions "strictly understood"** alone qualify for exemption; and *not the welfare activities or economic adventures* undertaken by the Government. This is not all. A rider has been added that even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to be an industry. As to which activities of the Government could be called sovereign functions strictly understood, has not been spelt out in the aforesaid case.[53]

11. As to which function could be, and should be, taken as **regal or sovereign function has been recently examined by a Bench** of this Court, to which one of us **(Hansaria, J.)** was a **party.** This was in **Nagendera Rao and Co. v. The State of Andhra Pradesh[54]** , in which case ***Sahai, J.*** Speaking for the Bench examined this question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of **sovereign immunity**. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the **old and archaic concept of a sovereignty** does not survive as **sovereignty now vests in the people**. It is because of this that in the aforesaid **Australian** case[55] the distinction between sovereign and non-sovereign functions was categorised as regal and non-regal. In some cases, the expression used is State function, whereas in some Governmental function.[56]

13. The aforesaid shows that if we were to extend the concept of **sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water-Supply case would get eroded, and substantially**. We would demur to do so on the face what was stated in the aforesaid

[52] Bangalore Water-Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213: 1978 (3) SCR 207.*

[53] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, p. 298

[54] N. Nagendera Rao and Co. v. The State of Andhra Pradesh, 1994 (6) SCC 205.

[55] Isaacs, J. in The Federated State School Teachers' Association of Australia v. The State of Victoria (1929) 41 C.L.R. 569, in which the learned Judge stated as below at page 585:

"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power, non-regal functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation, the charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised."

[56] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, pp. 299-300 (para11).

case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as' industry if substantially severable.[57]

3. State of U.P vs Jai Bir Singh (2005) 5 SCC 1 decided on 5 May 2005

As the cleavage of opinion between the two Benches of this Court seems to have been on the basis of seven judges' Bench decision of this Court in the case of Bangalore Water, the present case along with the other connected cases, in which correctness of the decision in the case of Bangalore Water is doubted, has been placed before this Bench.

Various decisions rendered by this Court prior to and after the decision in Bangalore Water, (supra) on interpretation of the definition of the word `industry' under the Industrial Disputes Act, 1947 have been cited before us. It has been strenuously urged on behalf of the employers that the expansive meaning given to the word `industry' with certain specified exceptions carved out in the judgment of Bangalore Water, (supra) is not warranted by the language used in the definition clause. It is urged that the Government and its Departments while exercising its `**sovereign functions**' have been excluded from the definition of `industry'. On the question of `what is **sovereign function**', there is no unanimity in the different opinions expressed by the judges in the Bangalore Water case. It is submitted that in a constitutional democracy where **sovereign**ty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the Directive Principles of State Policy contained in Part IV of the Constitution are `**sovereign functions**'. To restrict the meaning of `**sovereign functions**' to only specified categories of so called 'inalienable **functions'** like Law and Order, Legislation, Judiciary, Administration and the like is uncalled for. It is submitted that the definition of `industry' given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of `systematic organized activities' undertaken by the State and even individuals engaged in professions and philanthropic activities.

[57] Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, etc., (1996) 2 SCC 293, p. 300 (para11).

(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) Even in departments discharging **sovereign functions**, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

Beg CJ clearly seems to have dissented from the opinion of his other three brethren on excluding only certain State - run industries from the purview of the Act. According to him, that is a matter purely of legislation and not of interpretation. See his observations contained in paragraph 163:

``163. I would also like to make a few observations about the so-called ``**sovereign**'' **functions** which have been placed outside the field of industry. I do not feel happy about the use of the term ``**sovereign**'' here. I think that the term `**sovereign**' should be reserved, technically and more correctly, for the sphere of ultimate decisions. **Sovereign**ty operates on a **sovereign** plane of its own as I suggested in **Kesavananda Bharati's** case[58] supported by a quotation from Earnest Barker's Social and Political Theory. Again, the term ``Regal'', from which the term ``**sovereign**'' **functions** appears to be derived, seems to be a misfit in a Republic where the citizen shares the political **sovereign**ty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term ``**sovereign**'', in relation to the activities of the State, is more accurately brought out by using the term ``governmental'' **functions** although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.'' [Emphasis supplied]

Since Beg CJ was to retire on 22.2.1978, the Bench delivered the judgment on 21.2.1978 with its conclusion that the appeal should be dismissed. The above conclusion was unanimous but the three Hon. Judges namely Chandrachud J on behalf of himself and Jaswant

[58] Kesavananda Bharati v. State of Kerala, 1973 Supp SCR1.

Singh J. speaking for himself and Tulzapurkar JJ., on the day the judgment was delivered i.e. as on 21.2.1978, had not prepared their separate opinions. They only declared that they would deliver their separate opinions later. This is clear from paragraph 170 of the judgment which reads thus:

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 the Bangalore Water Supply and Sewerage Board case 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 **sovereign**ty in a constitutional democracy is different from the traditional concept of **sovereign**ty which is confined to `law and order', `defence', `law making' and `justice dispensation'. In a democracy governed by the Constitution the **sovereign**ty vests in the people and the State is obliged to discharge its constitutional obligations contained in the Directive Principles of the 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.

4. <u>Gujarat Forest Producers, Gatherers and Forest Workers Union vs. State of Gujarat, (2004) 2 GLH 302: (2004) 2 GLR 568: (2004) IIILLJ 259 Guj decided on 12 April 2004</u>

6. …. the definition of the word "industry" under Section 2(j) of the Act was progressive with its own universe of discourse and objectives. It was argued that the same word need not have the same meaning in different contexts and the word "industry" is required to be read from the widest possible angle in the context of the industrial law. It was submitted that the meaning of the words used in the statute can change from time to time with the change of conception and understanding of the people. What was excluded from the word

"industry" a few decades ago, may not be excluded today in view of the changing conception and understanding of the people, who were concerned with the industrial law. Even the concept of **sovereign functions** has undergone a change and is to be viewed strictly. It was argued that only the **functions** relating to defence of the country, law and order and administration of justice would be essential **sovereign functions** properly so called and all other **functions** should be treated as non-**sovereign**. The learned Senior Advocate further argued that all the Departments of the State Government, which were not discharging such essential **sovereign functions**, would fall within the purview of the definition of the word "industry" under Section 2(j) as regards the services rendered by them. He submitted that these departments discharging non-**sovereign functions** satisfy the triple test laid down by the Supreme Court in Bangalore Water Supply case. It was contended that if any activity was specifically excluded from the purview of the definition of the word "industry" under Section 2(j), then only can it be said that the said Act was not applicable. It was submitted that forestry was not a **sovereign function** and in any event, the employees were working on the projects such as nursery or roadside plantation undertaken by the Department, which activity amounted to industry within the meaning of section 2(j). It was contended that only the character of the activity undertaken was to be examined and it was immaterial who conducts it or whether it was conducted for profit or not. It was submitted that the activity of protecting and preserving forest was also a type of service rendered by the Department to the people which was not in exercise of any **sovereign function**. The augmentation of forest and protection of environment were also services rendered by the State Department to the people. Such work could be entrusted even to a private agency and therefore, it did not involve exercise of any **sovereign function**. The learned Senior Advocate further argued that the units or the projects of the forest department satisfy the *triple test laid down in the* ***Bangalore Water Supply*** *case*[59]. The dominant nature test laid down in the said decision suggested that the forest department was not exercising any **sovereign function** and the entire department would be an industry, because, it satisfied all the tests applicable for applying the statutory definition of "industry", namely, it undertakes an organized activity involving co-operation between the employer and employees on a large scale and the activities were carried on for the

[59] Bangalore Water-Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213.*

purpose of production of goods and services for satisfying the wants of the people.

[h] The decision of the Supreme Court in ***Agricultural Produce Market Committee*** *v. Ashok Harikuni*,[60] was cited to point out that it was held by the Supreme Court that, whether a particular power relates to **sovereign functions** depends on the nature of the power and the manner of its exercise. It was held that neither all governmental **functions** could be construed to be **sovereign,** nor could all statutory services be termed either **sovereign** or be excluded from the purview of the Central Act. In paragraph 32 of the judgement, the Supreme Court held that: "**Sovereign function** in the new sense may have very wide ramification but essentially **sovereign functions** are primary inalienable **functions** which only the State could exercise." It was held that, broadly, it was taxation, eminent domain and police power which covered the field. It may cover its legislative **functions**, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. It was held that, in view of the Preamble, Objects and Reasons and the Scheme of the Agricultural Produce Marketing (Regulation) Act, 1996, the predominant object clearly being regulation and control of trading of agricultural produce, the Marketing Committee including its **function**aries cannot be said to be performing **functions** which are **sovereign** in character, and most of its **functions** could be undertaken even by private persons and therefore, the Committee would fall within the definition of "industry" under Section 2(j) of the Act.

The decision of the Madhya Pradesh High Court in *Madhya Pradesh Irrigation Karamchari Sangh v. State of Madhya Pradesh*,[61] holding that Chambal Hydel Irrigation Project of the Government of Madhya Pradesh was an *industry* under Section 2(j); the decision of the Bombay High Court in *Executive Engineer, Yavatmal Medium Project Division v. Anant, Son of Yadao Murate*[62], holding that the Projects in question undertaken by the Irrigation Department of the State of Maharashtra fall within the definition of *industry* under Section 2(j) of the Act; decision of the Madhya Pradesh High Court in *Executive Engineer, central Public*

[60] Agricultural Produce Market Committee v. Ashok Harikuni, (2000)8 SCC 61.
[61] Madhya Pradesh Irrigation Karamchari Sangh v. State of Madhya Pradesh,1972(1) LLJ 374
[62] Executive Engineer, Yavatmal Medium Project Division v. Anant, Son of Yadao Murate, 1999(1) LLN 155.

Works Department v. K. Madhukar Purushottam[63], holding that Central Public Works Department is an industry; decision of the Calcutta High Court in *State of West Bengal v. Nani Gopal Jana*[64] holding that even in departments of the Government discharging **sovereign functions**, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) which defines industry under the Industrial Disputes Act; decision of the Rajasthan High Court in State of Rajasthan v. Ram Chandra[65], holding that the Scheme of the forest department for creation of a park was not a part of inalienable **sovereign function** and such department of forest can be treated as industry; decision of the Rajasthan High Court in State of Rajasthan v. Ram Chandra[66], holding that the activities undertaken by the forest department in the State of Rajasthan cannot be regarded as a part of **sovereign function** of the State and the Department of Forest in the State of Rajasthan was an industry within the meaning of section 2(j) of the Act; the decision of the Allahabad High Court in Zonal Chief Engineer, Uttar Pradesh Jal Nigam, Gorakhpur v. Presiding Officer, Labour Court, Gorakhpur[67], holding that Uttar Pradesh Jal Nigam was an industry within the meaning of Section 2(j), and the decision of the Karnataka High Court in *Tungabhadra Board, Tungabhadra Dam, Hospet, Bellary District v. Easu and another*[68], holding that Irrigation Department of the Government was an industry.

22. The contention that all welfare activities undertaken by the government will be "**industry"** within the meaning of section 2(j) was sought to be canvassed on the basis of the guideline contained in paragraph 161 of the judgement in Bangalore Water Supply[69] at clause (IV)(b) under the head "the dominant nature test" which has been re-produced hereinabove, as per which, notwithstanding the previous clauses, **sovereign functions**, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the government or statutory

[63] Executive Engineer, central Public Works Department v. K. Madhukar Purushottam, 1998(3) LLN 834
[64] State of West Bengal v. Nani Gopal Jana,1998(79) FLR 814.
[65] State of Rajasthan v. Ram Chandra, reported in 2003 LAB I.C. 8.
[66] State of Rajasthan v. Ram Chandra, 2003(1) LLN 619.
[67] Zonal Chief Engineer, Uttar Pradesh Jal Nigam, Gorakhpur v. Presiding Officer, Labour Court, Gorakhpur, 2001(4) LLN 1190.
[68] Tungabhadra Board, Tungabhadra Dam, Hospet, Bellary District v. Easu and another, 1999(4) LLN 1051.
[69] Bangalore Water Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213: 1978 (3) SCR 207.*

bodies. This would mean that when the activity of the government satisfies the triple test and is industry under Section 2(j), only the **sovereign functions** i.e., primary inalienable constitutional **functions** will be exempted. Such exemption will not apply to the welfare activities or economic adventures undertaken by the State, and which satisfy the triple ingredient test and are industries under Section 2(j). By no stretch of imagination can this clause be read to mean that all welfare activities or economic adventures undertaken by the government or statutory bodies, ipso facto, fall in the definition of "industry" even if they do not satisfy the third ingredient of "production/distribution of goods and services calculated to satisfy human wants or wishes". We, therefore, cannot accept the extreme proposition canvassed on behalf of the petitioners that all non-**sovereign functions** of the State, including welfare activities, by themselves constitute "industry". We hold that, to qualify to be an "industry", any governmental activity must necessarily satisfy all the three ingredients including the important ingredient reflecting the purpose of the activity namely, "for the production and / or distribution of goods and services calculated to satisfy human wants and wishes" as is understood in the economic sense indicated above in the context of which the guideline is obviously laid down. In **Bangalore Water Supply**[70], the Supreme Court took note of the fact that the words in the definition of "industry", "cannot be allowed grotesquely inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which labour is an integral part".

5. <u>Agricultural Produce Market Committee v. Ashok Harikuni,[71] decided on 22 September 2000</u>.

The main thrust of submission for either side is, one trying to bring the **functions** of the appellant-committee within **sovereign functions** and the other stretching it out of it. The submission for the appellant is the power of the government and **functions** of the committee, namely, notifying the intention of the government to regulate the marketing of specified agricultural produce within specified area under Section 3, declaration of market area under Section 4, establishment of market under Section 7, payment of Secretary and technical staff under Section 58, absorption of staff of market committee in government services under Section 59, appointment of other staff under Section 61, levy of market fees

[70] Bangalore Water-Supply & Sewerage Board v. R. Rajappa and Ors*, 1978 (2) SCC 213.*

[71] Agricultural Produce Market Committee v. Ashok Harikuni, (2000)8 SCC 61.

under Section 65, grant of license under Section 72, de-notification of market area under Section 143, and amalgamation of market committees under Section 144 are all **sovereign** in nature and hence it could not be construed to be an industry. On the other hand, learned counsel for the respondent submits **sovereign functions** are restricted to legislative, maintenance of law and order, administration of law and legal system. Hence, other **functions**, to which the appellant case falls, cannot be construed to be a **sovereign function**.

In relation to what are "**sovereign**" and what are "non-**sovereign**" **functions**, this Court in *Chief Conservator of Forests and Anr. vs. Jagannath Maruti Kondhare and Ors*[72], holds:

"12. We may not go by the labels. Let us reach the hub. And the same is that the dichotomy of **sovereign** and non-**sovereign functions** does not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of **Nagendra Rao case**[73]. As per the decision in this case, one of the tests to determine whether the executive **function** is **sovereign** in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are **functions** which are indicative of external **sovereign**ty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, **functions** of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even martial. Because of this the demarcating line between **sovereign** and non-**sovereign** powers has largely disappeared.

13. The aforesaid shows that if we were to extend the concept of **sovereign function** to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water Supply case would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood **sovereign function**, welfare activities

[72] Chief Conservator of Forests vs. Jagannath Maruti Kondhare, 1996 (2) SCC 293.
[73] N. Nagendera Rao and Co. v. The State of Andhra Pradesh, 1994 (6) SCC 205.

of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of **sovereign function**, there may be an inner circle encompassing some units which could be considered as industry if substantially severable."

So, **sovereign function** in the new sense may have very wide ramification but essentially **sovereign functions** are primary inalienable **functions** which only State could exercise. Thus, various **functions** of the State, may be ramifications of `**sovereign**ty' but they all cannot be construed as primary inalienable **functions**. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative **functions**, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between **sovereign** and non-**sovereign function** could be found by finding which of the **functions** of the State could be undertaken by any private person or body. The one which could be undertaken cannot be **sovereign function**. In a given case even in subject on which the State has the monopoly may also be non-**sovereign** in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise **sovereign** in nature. Absence of profit making, or mere quid pro would also not make such enterprise to be outside the ambit of "industry" as also in State of Bombay[74].

6. <u>Umayammal vs State of Kerala[75] (KER)-1982-10-30 decided on 7 October 1982</u>

b) **Sovereign functions** strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging **sovereign functions**, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

[74] State of Bombay and Ors v. The Hospital Mazdoor Sabha, [1960] 2 SCR 866.

[75] Umayammal vs State of Kerala, (1983) ILLJ 267 Ker

The decisions in Safdarjung Hospital's case[76], National Union of Commercial Employee's case[77] and Delhi University's case[78] (supra) were overruled. The majority of the Judges, Beg, C.J., Chandrachud, Bhagwati, Krishna Iyer and Desai, JJ., were in agreement with regard to this. Justice Chandrachud went further. According to him:

To concede the benefit of an exception to the State activities which are in the nature of **sovereign functions** is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity, for, **sovereign functions** can only be discharged by the State and not by a private person. If the State's inalienable **functions** are excepted from the sweep of the definition contained in the sub-section one shall have unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry. In this respect it should make no difference whether on the one hand an activity is undertaken by a corporate body in the discharge of its statutory **functions** or on the other by the State itself in the exercise of its inalienable **functions**. When undertaken by a private individual if they are industries when undertaken by the State, they are also industries. Items 8, 11,12, 17 and 18 of the First Schedule read with Section 2(n)(vi) of the Act show that conceivably a defence establishment, a mint, or a security press can be an industry even though these activities are ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or **functions**.

18. In the light of the Supreme Court dicta we have to proceed on the basis that **sovereign functions** strictly understood alone qualify for exemption not the other activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging **sovereign functions** if there are units which are industries, and they are substantially severable then they can be considered to come within Section 2(j) of the Act. Where a complex of activities some of which qualify for exemption and others not, involved employees of the total undertaking some of whom are not workmen, and some departments are not productive of goods and services if isolated even then the predominant nature of the services and the integrated nature of the departments as explained in the

[76] Safdarjung hospital v. Kuldip Singh Sethi,1970 (1) SCC735 :(1970) II L.L.J. 266.
[77] National Union of Commercial Employees v. M. R. Meher (Solicitors' case)1962 Supp. (3) SCR 157.
[78] University of Delhi v. Ram Nath, 1964 (2) SCR 703.

Corporation of Nagpur case will be the true test. We are here only summing up the position in the words of the Supreme Court itself. In those cases, a contention has been taken up by the State that Article 226 of the Constitution, under which the petitioners have approached this Court, this Court will exercise powers conferred by the said Article only in the absence of an equally efficacious remedy to redress an injury that a petitioner claims to have been inflicted upon him. The petitioners can nave recourse to such Tribunals established under the Industrial Disputes Act for redressal of their grievances if any and this Court should not exercise the discretion vested in it under Article 226 of the Constitution. It is contended that the remedy by approaching the Industrial Tribunal or Labour Court is equally efficacious, if not more efficacious, than resorting to a remedy under Article 226 of the Constitution from the High Court. In regard to the provisional services Government or the statutory bodies to what extent persons having such service could claim benefits under the Industrial Disputes Act is an important question for which it is necessary that the High Court should resolve the conflict. Guidance from the High Court is really needed in the matter even for keeping the Industrial Tribunals on the right path. Therefore, we do not think that we should refuse to exercise our discretion under Article 226 in the matter.

25. O.P. No. 622 of 1982: The petitioner herein is a temporary appointee as a Confidential Assistant in the Munsiffs Court, Devicolam. The Judicial Department is undoubtedly exercising a **sovereign function** of the State and no employee of the department can claim benefit under the Act. The Original Petition is dismissed.

26. O.P.No. 1498 of 1982: Here we are concerned with a Driver of the Kerala State Civil Supplies Corporation Ltd, While the corporation may be an agency or instrumentality of the State, it cannot be said that it is discharging a **sovereign function**. A driver of the Corporation will certainly come within the ambit of the term 'workman' in the Act. In the circumstances his services can be terminated only in accordance with the provisions of the Industrial Disputes Act.

7. <u>J.J. Shrimali vs District Development Officer, LAWS[79](GJH)-1988-8-20] decided on 8 August 1988</u>
(A.M. Ahmadi J.(as he then was):

[79] **J.J. Shrimali vs District Development Officer, LAWS, (1989) 1 GLR 396.**

2. In the counter filed on behalf of the Respondent-Panchayat it is stated that having regard to the serious drought conditions prevailing in the District of Mehsana since 1985-86 the State Government had started relief works to provide relief to drought affected people. The main object of these relief works is to provide succour to the drought affected people and not to construct roads, tanks, etc. These relief works are undertaken by the Government on humanitarian considerations to ensure that drought-stricken people do not die because of starvation or lack of maintenance. The principal object of the State is to provide relief during the period of drought and scarcity conditions prevailed with a view to fulfilling its obligations under Arts. 38, 39 and 41 of the Constitution of India. The State as a **sovereign** power in a democratic set-up is charged with the duty to protect its people during severe drought and scarcity conditions. In response to these obligations the State Government undertook relief works in different Talukas of Mehsana District and entrusted the execution thereof to the District Panchayat. Since these relief works were stated in discharge of the **sovereign function** of the State, the respondents contend that such works cannot be termed 'industry' within the meaning of Section 2(j) of the Act. It is, therefore, contended that the provisions of the Act have no application and it is not obligatory on the part of the respondent Panchayat to follow the procedure for termination of service on the premise that it amounts to retrenchment within the meaning of Section 2(00) of the Act. Alternatively it is contended that even if it is held that the provisions of the Act are attracted, the termination of service on the completion of relief works would not amount to retrenchment as the case would be governed by the newly inserted clause (bb) in Section 2(00) of the Act. Broadly stated, the defence is two-told, namely, (i) that the relief works undertaken by the State Government and executed by the District Panchayat in discharge of the **sovereign function** of the State cannot, therefor, come within the meaning of 'industry' defined in Section 2(j) of the Act; and (ii) alternatively, even if it is assumed (though not admitted) that the petitioners have completed 240 days as alleged and the provisions of the Act apply, the termination of service of the petitioners cannot be termed 'retrenchment' within the meaning of Section 2(00) of the Act as the case falls within the exception contained in clause (bb) of the said definition.

(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) Even in departments discharging **sovereign functions**, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).
(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".
Proceeding further the learned Chief Justice said as follows (p 352): "If express rules under other enactments govern the relationship between the State as an employer and its servants as employees it may be contended, on the strength of such provisions, that a particular set of employees are outside the scope of the Industrial Disputes Act for that reason".

The question then is whether the District Panchayat was executing the scheme of the State Government introduced for providing relief to the drought affected persons in discharge of its governmental or **sovereign functions**? Placing reliance on the decision of the Court in P. W. D. Employees' Union v. State of Gujarat[80], it was argued that the construction of dams and allied activities being a welfare activity or an economic adventure undertaken by the Government, cannot stricto sensu be described as an activity undertaken in the discharge of governmental or **sovereign functions**.

12. In P.W.D. Employees' Union (supra) the question which arose for consideration was whether daily rated labourers on the nominal muster roll of the P.W.D. (Irrigation) employed for diverse works in connection with the construction and maintenance of medium sized irrigation undertaken by the State Government can be said to be 'workmen' under Section 2(s) of the Act. The petitioner there in had put in service ranging from one year to about eleven years. All of them had completed continuous service of 240 days in a year. Their services came to be terminated without any notice whatsoever. They, therefore, approached this Court for quashing and setting aside their impugned terminations and for directing the respondents to reinstate them in service with continuity and full back wages. The orders of termination were challenged principally on the ground that they were in violation of Section 25F of the Act. The petition was resisted on the ground that construction and maintenance of the dam cannot

[80] P. W. D. Employees' Union v. State of Gujarat, (1987) 2 GLR 1070, (1988) ILLJ 524 Guj

be said to be an 'industry' within the meaning of Section 2(j) of the Act and, therefore, the matter fell outside the purview of the Act; the termination order being the outcome of the exercise of **sovereign functions** of the State in the construction of dams for irrigation purposes, vide Entry 17 in List II of the Seventh Schedule to the Constitution. Secondly, it was contended that casual labour placed on nominal muster roll cannot claim any right to continue in service and that their services could validly be terminated on the completion of the work for which that were engaged. Whether construction and maintenance of the dam can be said to be an 'industry' was one of the questions which the Court was required to consider. After referring to the decisions of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra), this Court came to the conclusion that the activity in question was an 'industry' within the meaning of Section 2(j) of the Act and hence the petitioners could not be said to have been discharged in exercise of **sovereign functions**, stricto sensu, and since they had completed 240 days it was obligatory on the part of the department to comply with the requirements of Section 25F of the Act. Non-compliance with the requirements of the said provisions was held to render the impugned orders of termination illegal.

IV. <u>CASE LAWS ON STATE COVERED UNDER ARTICLE 12 OF CONSTITUTION OF INDIA</u>

1. Ajay Hasia v. Mujib Sehravardi 1981(I)SCC 722: AIR 1981 SC 487

V. <u>OTHER CASE LAWS ON INSTITUTIONS COVERED UNDER THE DEFINITION OF STATE COVERED UNDER ART. 12 OF CONSTITUTION OF INDIA</u>

1. B.S. Minhas v. Indian Statistical Institute, (1983) 4 SCC 582: AIR 1984 SC 363.
2. P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141: AIR 1984 SC 541.
3. S.M. Ilyas v. Indian Council of Agricultural Research, (1993) 1 SCC 182: AIR 1993 SC 384.
4. All India Sainik School Employees' Assn. v. Sainik Schools Society, 1989 Supp (1) SCC 205: AIR 1989 SC 88.
5. U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey, (1999) 1 SCC741: AIR 1999 SC 753

6. Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam, (2005)1SCC 149
7. A.L. Kalra v. Project and Equipment Corpn, (1984) 3 SCC 316.
8. Workmen v. Food Corporation of ndia, (198;) 2 SCC 136: AIR 1985 SC 670.
9. Workers' Union v. Food Corporation of India, (1996) 9 SCC 439: AIR 1996 SC 2412.
10. Bihar State Harijan Kalyan Parishad v. Union of India, (1985) 2 SCC 644: AIR 1985 SC 983.
11. Balbir Kaur v. SAIL, (200o) 6 SCC 493: AIR 2000 SC 1596.
12. Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Assn., (2002) 2 SCC 167: AIR 2002 SC 609.
13. Mahabir Auto Stores v. Indian Oil Corpn., (1990) 3 SCC 752: AIR 1990 SC 1031.
14. Manmohan Singh Jaitla v. UT of Chandigarh, 1984 Supp SCC 540: AIR 1985 SC 364.
15. Dinesh Kumar v. Motilal Nehru Medical College, (1985) 3 SCC 542: AIR 1985 SC 1415.
16. Rohtas Industries Ltd. v. Bihar SEB, 1984 Supp SCC 161: AIR 1984 SC 657:
17. Surya Narain Yadavv. Bihar SEB, (1985) 3 SCC 38: AIR 1985 SC 941.
18. W.B. SEB v. Desh Bandhu Ghosh, (tg85) 3 SCC116: AIR 1985 SC 722
19. Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (986) 3 SCC 156: AIR 1986 SC 1571.
20. Star Enterprises v. City and lndustrial Development Corpn. of Maharashtra Ltd., (1990) 3 SCC 280.

VI. FOREIGN CASE ON SOVEREIGN FUNCTION

1. Federated State School Teachers Association, Australia vs State of Victoria (1928-29) 41 CLR 569

VII. ISSUES FOR CONSIDERATION

1. The triple test laid down under Bangalore Water Supply vs Rajappa (1978) 2 SCC 213 to determine as to whether an institution in question falls under the definition of ‘industry’ under section 2(j) of the IDA, 1947 is widest in its amplitude hence, needs to regulated in the light of tests laid down under Ajay Hasia v. Mujib Sehravardi 1981(I)SCC 722: AIR 1981

SC 487 to determine as to whether the institution in question falls under the definition of State under Art. 12.

2. Along with the definition of industry under s.2(j) of IDA, 1947 it is essential and imperative to consider the definition of 'industrial dispute' (s.2k) and 'workman'(s.2(s)) under the same Act to arrive at a holistic view on the definition of Industry.

3. Time has come to decide the status of an Institution based on its object and purpose for which it was created/established vis a vis its ever-expanding functions.

The appellant most respectfully submit that the principle expounded by Justice Krishna Iyer as accepted by majority of Judges should be expounded and improved for the benefits of the workers and to assure their constitutional rights as accepted by this Hon'ble Court.

FILED BY:-

[**AJIT KUMAR EKKA**]
FILED ON: 31.12.2023 ADVOCATE FOR THE RESPONDENT
NEW DELHI

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 ...APPELLANT

VERSUS

Brijesh Kumar Sharma ...RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT BEFORE THE 9 - JUDGE CONSTITUTION BENCH OF THIS HON'BLE COURT IN TERMS OF THE ORDER DATED 16.02.2026 PASSED BY THIS HON'BLE COURT

PAPER BOOK

[*For index kindly see inside*]

KSHITIJ MUDGAL

ADVOCATE FOR RESPONDENT

INDEX

Sr. No.	PARTICULARS	Pg. Nos.
1.	Written Submissions on behalf of the Respondent before the 9-Judge Bench of this Hon'ble Court in terms of the order dated 16.02.2026 passed by this Hon'ble Court	**1-12**
2.	Proof of service	**13**

FILED BY:-

KSHITIJ MUDGAL

ADVOCATE FOR RESPONDENT

FILED ON: 28.02.2026

NEW DELHI

IN THE SUPREME COURT OF INDIA

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MOST RESPECTFULLY SHOWETH:

BRIEF FACTS AND SUBMISSIONS IN THE CIVIL APPEAL

A. That the present civil appeal has been filed by the Appellant challenging the concurrent findings of the Ld. Labour Court, the Ld. Single Bench and the Hon'ble Division Bench of the Hon'ble High Court whereby the Appellant has been declared to be an industry and was directed to reinstate the Respondent after payment of 50 % of back wages. Pertinently, the Appellant had approached this Hon'ble Court previously, vide C.A. No. 311 of 2004, whereupon this Hon'ble Court had remanded the matter to the Hon'ble High Court to decide the sole issue as to whether the Appellant falls within the definition of an "industry". It is most humbly submitted that the Hon'ble High Court, vide the order impugned herein, has categorically held the Appellant to be an "industry".

However, the Appellant filed the special leave petition which was converted into the present appeal. This Hon'ble Court, vide order dated 04.04.2011 was pleased decline stay of the impugned order. Thus, the

Respondent has been continuing on the job for the last more than 30 years. It is also stated that this Hon'ble Court passed the order as follows:-

I.A.No.114194/2019 in C.A.No.3119/2011

Heard learned counsel for the parties and carefully perused the averments made in the application.

Vide order dated 02.01.2017, the instant matter is referred to a larger Bench of Nine-Judges to answer the questions raised in the reference order dated 05.05.2005 passed by the Five- Judges Bench in State of U.P. vs. Jai Bir Singh, (2005) 5 SCC 1.

As disposal of the present case is likely to take some time, we direct the appellant – Central Council for Research in Ayurveda and Siddha to pay the scale of the Ward Boy to the respondent from this month onwards pending disposal of the matter.

IA No.114194/2019 stands disposed of accordingly.

Thus, the Respondent has been regularly working against the permanent and perennial nature of post. However, the services of the Respondent have not been confirmed due to the pendency of the present reference. In view thereof, the present civil appeal be dismissed.

NON-RESEARCH ACTIVITIES CARRIED ON BY THE APPELLANT

B. That the Hon'ble Court has rightly held the Appellant to be an industry since the objects of the Appellant, apart from research in Ayurveda and Siddha, also include, *inter alia,* acceptance of gifts, donations, subscription in cash and securities; to invest and deal with funds and monies of the Central Council; sell or lease or mortgage or exchange moveable and immoveable properties with prior approval of the government etc. It is submitted that the Appellant charges fees and payment from private organisations as well for the research undertaken by them and does not solely carry out research tasks for the government. Hence, the Appellant does not discharge social welfare

or sovereign functions as claimed by it. **[finding at page 9 of the Hon'ble High Court in the impugned order]**

C. That the aims and objects of the Appellant does not restrict the activities and research undertaken by the Appellant solely for the use of Government. It is pertinent to state that the following aims and objects of the Appellant incorporated in the Memorandum of Association, Rules and Regulations and Bye-Laws of the Appellants clearly demonstrate the commercial nature of the Appellant, some of which are as follows:-

a. 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 and in India in particular. **[page 43]**

b. To prepare, print, publish and exhibit any papers, posters, pamphlets, periodicals and books for furtherance of the objects of the Central Council and to contribute to such literature. **[page 44]**

c. To borrow or raise monies with or without security or on security mortgage, charge, hypothecation or pledge of all or any of the immoveable or moveable properties belonging to the Central Council or in any other manner whatsoever. **[page 44]**

d. To invest and deal with the monies of the Central Council or entrusted to the Central Council not immediately required in such manner as may from time to time be determined by the Governing Board of the Central Council. **[page 45]**

e. To acquire and hold, whether temporarily or permanently, moveable or immoveable property, necessary or convenient for the furtherance of the objects of the Central Council. **[page 45]**

f. To sell, lease, mortgage and exchange and otherwise transfer any of the properties, moveable or immoveable, of the Central Council provided prior approval of the Central Government is obtained for the transfer of immoveable property. **[page 45]**

Thus, the activities carried on by the Appellant do not fall within the sovereign functions of the State.

D. That it is most humbly submitted that the Hon'ble High Court has rightly distinguished the judgment of this Hon'ble Court in ***Physics Research Laboratory vs. K.G. Sharma AIR 1997 SC 1855*** **(para 12)** since in that case this Hon'ble Court was pleased to observe, *inter alia,* that PRL was solely conducting research work for the use of the government and the work done by PRL was not for the benefit or use of others. Whereas the objects of the Appellant have specific clauses which allow the research work done by the Appellant to be shared with other institutions, associations and societies. Hence, the aforesaid judgment of this Hon'ble Court is not applicable to the facts of the present case.

E. That the Appellant falls within the definition of the term "industry" since the Appellant performs a systematic activity, i.e. research and other non-research financial activities in line with objects of the Appellant based on an employer-employee relationship between the Appellant and Respondent. Furthermore, the activities and objects of the Appellant in undertaking research on behalf of private organisations and entities, clearly establishes that Appellant is providing a service to satisfy human wants and wishes. The financial objects of the Appellant clearly demonstrate that the Appellant is not a charitable institution since it also deals with, *inter alia,* funds and monies of the Central Council. Hence, the Appellant squarely falls within the definition of the term 'industry'.

APPELLANT DOES NOT PERFORM SOVEREIGN FUNCTIONS

F. That it is most humbly submitted that the activities and objects of the Appellant as laid down in the Memorandum of Association, Rules and Regulations and Bye-Laws do no qualify as providing sovereign functions. The scope of 'sovereign functions' as laid down by this Hon'ble Court is restricted only to such activities which cannot be undertaken by any private person or body. Whereas, the objects and activities of the Appellant, including dealing with the monetary securities and moveable and immoveable properties, clearly proves that the activities of the Appellant can be performed by any private person or body and hence do not qualify as 'sovereign functions'. **[Para 32 of *Agricultural Produce Market Committee v. Ashok Harikuni, (2000) 8 SCC 61]***

G. That the activities, functions and objects of the Appellant are of industrial nature and not solely for the purpose of governmental usage. The Appellant organization is carrying out work which is in the nature of research with further tasks of research and analysis for private and commercial entities other than the government organizations or departments.

H. That it is most humbly submitted that in the present case, the defence of sovereignty cannot be claimed by the Appellant since the Respondent was employed as a Ward Boy (Class IV employee) and hence there was no proximity to the discharge of sovereign functions, if any. The Supreme Court of United Kingdom in *The Royal Embassy of Saudi Arabia (Cultural Bureau) v. Constantine [2025] UKSC 9* has held that in service law, the Court has to assess the employee's proximity to the Sovereign Function in order for the immunity to be attracted. If it is found that the employee in question was merely an ancillary/support staff, then the defence of Sovereign Immunity would not be available to the State.

I. That thus, it is submitted that the sovereign activities in the true sense mean those activities which can only be carried out by the Sovereign and not by

a private person. In today's world, the State's activities are multifarious, including welfare activities, which can also be carried out by a private entity. Therefore, for the exemption of Sovereign Function to apply, it is imperative to ascertain whether the act in question can be carried out by a private person or not. Additionally, the proximity, of the employee/workman in question, to the discharge of Sovereign Function must also be seen. For example, a private agency cannot do policing, nor can it dispense justice, hence the same are considered to be sovereign functions. However, the Respondent, who was working as a Ward Boy (Class IV employee) in the Appellant Institution cannot be said to be discharging a sovereign function, therefore the defence of Sovereign Function would not apply in case the person is wrongfully terminated.

SUBMISSIONS VIS-À-VIS THE QUESTIONS FRAMED BY THIS HON'BLE COURT

I. DEFINITION IN BANGALORE WATER SUPPLY AND INDUSTRIAL RELATIONS CODE 2020 EXPRESSLY EXCLUDE RESEARCH INSTITUTIONS

1. That the Industrial Relations Code 2020 (hereinafter referred to as '**2020 Code**') defines the term "industry" in 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;

2. That a perusal of the definitions as laid down in ***Bangalore Water Supply & Sewerage Board vs A. Rajappa (1978) 2 SCC 213*** and the 2020 Code clearly shows that the research departments like the Appellant herein does not fall within the exceptions to the term "industry". The Legislature has clearly incorporated the tests and exceptions laid down by this Hon'ble Court in *Bangalore Water Supply and Sewerage Board (Supra)* which have come to be adopted with modifications, and the test itself has been ratified and validated. The intention of this Hon'ble Court and the Legislature in exempting only such research departments engaged in defence research, atomic energy and space clearly proves that the Appellant falls within the definition of the term "industry".

3. That the tests laid down in *Bangalore Water Supply and Sewerage Board (supra)* clarified the ambiguity in Section 2(j) of the Industrial Disputes Act, 1947 and extended the protection to persons employed by various entities which may not be considered 'industry' in layman terms, so that disputes arising in connection with them be settled expeditiously and such workmen are not left without rights. It is submitted that the tests laid down by this Hon'ble Court in *Bangalore Water Supply and Sewerage Board*

(supra) are in line with the Basic Structure of the Constitution and furthers the cause of socialism as laid down in Article 38 of the Constitution and the objectives laid down in Articles 43 and 43-A of the Directive Principles of State Policy enshrined in the Constitution and striking down the test would only give rise to further uncertainty and conflict in interpretation of the rights of the workmen and the corresponding duties of the employer.

II. Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act?

4. That it is submitted that this Hon'ble Court in *Bangalore Water Supply and Sewerage Board (supra)*, in para 143 thereof, laid down the *dominant nature* test to be used as a yardstick for ascertaining whether an undertaking would qualify as an "industry". It is most humbly submitted that, applying the *dominant nature* test in the present case, it will become evident that the Appellant is not engaged in social welfare activities and schemes as the Memorandum of Association, Rules and Regulations and Bye-Laws of the Appellant clearly involve undertaking commercial, financial and non-research activities as well. It is further submitted that even if it is assumed, without prejudice to the rights and contentions of the Respondent, that the Appellant is also engaged in social welfare activities and schemes, the Appellant would fall within the definition of the term "industry" as it fulfils the trappings of an "industry" defined in either the *Bangalore Water Supply and Sewerage Board (supra)* or the 2020 Code.

5. That it is most humbly submitted that neither the judgment of this Hon'ble Court in *Bangalore Water Supply (supra)* nor the *2020 Code* expressly exclude the entities engaged in social welfare activities. The exemption provided to charitable, social and philanthropic organisations is qualified by the term 'wholly or substantially engaged' which would infer that after

applying the *dominant nature* test, the concerned organisation should be carrying out charitable, social and philanthropic activities. In the present case, it is most humbly submitted that the Appellant is neither engaged in charitable, social or philanthropic activities.

6. That it is most humbly submitted that the State, in order to provide social welfare benefits to its citizens, undertakes research activities and introduces a plethora of schemes, ranging from healthcare to business, which would require a larger workforce for its implementation. Denuding such workmen of their rights merely because such entities are engaged in social welfare activities would be contradictory to the preamble and the aims and objects of the 2020 Code.

7. That it is also to be seen that the aims and object of the Industrial Disputes Act, 1947 (hereinafter referred to as '**1947 Act'**) do not use the nature of an activity but purely concentrate on the smooth functioning of industries and organizations that have an employer-employee relationship. This Hon'ble Court, in *Bangalore Water Supply and Sewerage Board (Supra)*, has also endorsed the view that the nature of the activity, be it welfare or research, does not have a bearing on the true application of the 1947 Act but the relationship between the employer-employee which leads to the disputes invoking the provisions of the 1947 Act are to be relied upon.

8. That therefore, welfare activities stand on a different footing than that of sovereign activities as the latter can be taken up only at the instance of the State and not at the instance of any private individual thus not primarily making it an inalienable function of the government.

9. That as per the aims and objects of the Appellant organization, as it is an activity systematically undertaken, one of its objectives is to share and render material research based service to other organizations as per their aims and objects for which the Appellant organization receives monies from

various sources and through various modes as contemplated in the aims and objects which establish the fact that the Appellant organization is engaged in commercial activities also. The same standing has been found to be within the definition of industry as per the judgement of this Hon'ble Court in ***The Ahmedabad Textile Industry's Research Association vs. The State of Bombay & Ors. AIR 1961 SC 484.***

III. What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the Industrial Disputes Act, 1947

10. That it is submitted that according to Jean-Jacques Rousseau, the true meaning of the term "*sovereign*" is something which is inalienable in every part and thus if passed on to someone else, would itself impact the sanctity of which is it has gained sovereignty and thus lose the sole purpose of doing to those acts. Thus, the author himself states in 'The Social Contract', Book II:

> "*But the body politic, i.e. the sovereign, owes its very existence to the sanctity of the contract; so it can never commit itself, even to another state, to do anything that conflicts with that original act—e.g. to alienate any part of itself, or to submit to another sovereign. ·I'm saying not that the sovereign ought not to do such a thing, but that it can't do so·: violation of the act ·of contract-making· by which it exists would be self-annihilation; and nothing can be created by something that has gone out of existence!"*

11. That it is submitted that this Hon'ble Court in *Bangalore Water Supply & Sewage Board (Supra)* deliberated as to what could constitute to be sovereign and non-sovereign and delivering his judgment M.H. Beg. CJ. stated:

> ***"****163. I would also like to make a few observations about the so-called "sovereign" functions which have been placed outside the field of*

industry. I do not feel happy about the use of the term "sovereign" here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in Keshavananda Bharati case [(1973) 4 SCC 225] supported by a quotation from Ernest Barker's Social and Political Theory. Again, the term "Regal", from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."

12. That it is most humbly submitted that the question as to what constitutes a '*sovereign function*' and should be kept outside the scope of the term '*industry*' has been correctly held in *N. Nagendra Rao & Co. v. State of A.P.* reported in *(1994) 6 SCC 205* where it was held that sovereign functions should include defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory and function which indicate external sovereignty. Moreover, this Hon'ble Court further held that the term *"sovereign functions*" would also include administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a Constitutional Government and barring the aforesaid, the State cannot claim any immunity.

13. That it is submitted that the work carried out by the Appellant organization, as detailed in the Memorandum of Association, Rules and Regulations and Bye-Laws also includes sharing the research with other organizations and

institutions which can use the same to the benefit of their member companies or organizations. The Appellant's research is not restricted solely for the use of the Government, thus rendering them within the definition of the term "industry". This Hon'ble Court in *Federation of Indian Chambers of Commerce and Industry v. Their Workmen,* reported in *(1972) 1 SCC 40*, while discussing the Federation's nature of work, which stands on the same footing as the Appellants in the present appeal, had held that such activities are business activities and material services rendered to businessmen, traders etc.

Thus, in view of the above facts and circumstances, it is most respectfully prayed that the present civil appeal be dismissed with costs.

FILED BY:-

KSHITIJ MUDGAL

ADVOCATE FOR RESPONDENT

FILED ON: 28.02.2026

NEW DELHI

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1276/2011

IN THE MATTER OF:

STATE OF HARYANA — PETITIONER

VERSUS

MAHENDER SINGH — RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE RESPONDENT
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1276/2011

IN THE MATTER OF:

STATE OF HARYANA

APPELLANT

VERSUS

MAHENDER SINGH
RESPONDENT

The petitioner has challenged the order dated 18-03-1999 passed by Hon'ble Punjab and Harayna high court dismissing the Civil Writ petition filed by petitioner/Appellant upholding the order dated 25-09-1998 passed by the labour court reinstating the petitioner with 25% back wages.

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT MAHENDER SINGH

Date	Event
1982	The respondent was engaged by petitioner.
31.12.1993	The Respondent was disengaged from work without complying with the provisions of Industrial Disputes Act.
29.05.1998	The respondent approached the labour court and the Labour Court vide its award dt.21.05.1998 held that the Respondent is entitled to be reinstated on his previous post with continuity of service and 25% back wages.
18.03.1999	The petitioner herein challenged the award dated 21-05-1998 before High Court of Punjab and Haryana but High court upheld the award of Labour Court.
23-06-2000	Aggrieved by the Judgment of High Court, Petitioner filed Special Leave Petition before Supreme Court.
28.01.2011	First Right to Information application was filed and respondent got the information saying he is working as a daily wage labour under Petitioner.
14.02.2011	Second Right to Information application was filed and respondent got information that those who have been engaged after the date of engagement of Respondent have been regularized. But Respondent's reinstatement was pending in the name of pending case in court.

2012	Respondent filed an application seeking Ad-Interim Ex-Parte Directions and this Hon'ble Court only partially stayed the impugned order to the extent of grant of 25% back wages.

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for welfare of public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given to the definition of **INDUSTRY** considering the welfare and benefit of the employees and to prevent their exploitation. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organisation.

I. **Introduction of the definition of *"Industry"***

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948

which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

In 1970, in the case of **Management of Safdarjung Hospital v/s. Kuldip Singh Sethi**. In this case, the issue arises "whether a firm of solicitors constitutes an industry?". And it was held that the essential basis of industrial disputes is that the dispute must arise between capitalist and labour in enterprises was capitalist and labour combine to produce commodities or provide service.

It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

Case of Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.

1. In 1978, in the Landmark case of Bangalore Water Supply and Sewerage Board v. A. Rajappa The the constitution bench has given liberal interpretation to the word industry and held that hospitals, clubs, and educational institutions, research and charitable institutions as industries and this was ruled out in the ratio of 3:2 of Hon'ble judges.

   It overruled its earlier decisions given in the cases of Safdarjung Hospital vs. K.S sethi AIR 1970 SC 1407. National Union of commercial Employees vs. M.R Meher AIR 1962 SC 1080, University of Delhi v. Ram Nath AIR 1963 SC 1873.

   Madras Gymkhana club employees vs. Management of Gymkhana club AIR 1968 SC 554. and cricket club of India vs. Bombay Labour Union AIR 1969 SC 276.

III. **Brief Background and history of legal development of the definition of history by Hon'ble Supreme court through judicial pronouncements**.

Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, 1958 SCC OnLine SC 4

1. The majority, led by Justice S.K. Das, interpreted the definition of "industrial dispute." The term "any person" in the definition was deemed not to encompass all individuals but those with a direct or substantial interest related to employment, non-employment, terms, or conditions of labor. The Court rejected a broad interpretation.

2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as industrial disputes, contingent on workmen's interest.

3. The majority decision dismissed the appeal, stating that Dr. Banerjee was not a 'workman,' and the dispute did not qualify as an industrial dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay,

1949 SCC Online FC 12

1. That a dispute in regard to the reinstatement of a dismissed employee is a dispute "connected with the employment or non-employment of a person" and is therefore an "industrial dispute" within the meaning of s. 2, cl. (k), of the Industrial Disputes Act, 1947.

2. that the definition of the term "employer" in s. 2, cl. (g), of the said Act is not exhaustive or inclusive and does not limit the application of the Act to undertakings carried on by the Central or Provincial Government or a local authority. The Act applies also to industries carried on by private individuals and associations.

D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619

1. The Act defines "industry" and "industrial dispute" as any business, trade, undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

2. The meaning of "industry" and "industrial dispute" in a modern society, where disputes were not isolated but rather a result of a continuous process of social evolution. It emphasizes the need for legislation to address the significant problems that arise in the industrial field, ensuring that society remains adaptable and responsive to changing circumstances.

State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44

1. In this case respondents 2 and 3, who were ward servants at J. J. Group Of Hospital in Bombay under state control, were retrenched without compensation, violating S. 25F(b) of the Industrial Disputes Act, 1947. They sought a writ of mandamus from the High Court, but the single judge dismissed it, stating that non-payment of compensation didn't invalidate retrenchment as S. 25I provided a remedy for recovery.

2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

3. This Hon'ble court held that the doctrine of quid pro quo (profit motive) wasn't crucial in determining whether an activity qualifies as an industry.

Corpn. of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45

1. The question was whether the municipal activities of the Corporation of Nagpur City fell within the definition of 'industry' as per the C.P. and Berar Industrial Disputes Settlement Act, 1947. Disputes arose between the Corporation and its employees, and the State Government referred them to the State Industrial Court. The Industrial Court ruled that the Corporation and most of its departments were covered by the definition of 'industry.The High Court rejected the contention.

2. The Supreme Court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only activities analogous to trade or business could be industries. It affirmed that if a service rendered by a corporation qualified as an industry, the employees of the departments connected with that service were entitled to the benefits of the Act.

3. The court also ruled that if a municipal department discharged multiple functions, some falling within and some outside the definition of industry, the predominant functions of the department would be the criterion for the purposes of the Act.

University of Delhi v. Ram Nath, 1963 SCC Online SC 117

1. The University of Delhi and Miranda House (a college affiliated with the University) were found not to constitute an "industry" under the Industrial Disputes Act, 1947.

2. The Tribunal rejected the appellants' contention and awarded retrenchment compensation to the respondents

3. The Supreme Court held that the work of education, especially in institutions like the University of Delhi, is primarily carried out with the assistance of teachers. Considering the exclusion of the whole class of teachers from the definition in Section 2(s), the court concluded that it could not have been the policy of the Act to treat education as an industry, particularly for the benefit of a minor and insignificant number of subordinate staff.

Cricket Club of India Ltd. v. Bombay Labour Union, (1969) 1 SCR 600.

1. The court pointed out that the income earned by the club, such as rents from immovable properties, was not attributable to the aid and cooperation of employees. The facilities provided, including residential accommodation and catering were primarily for the club members and not in the nature of running a hotel or systematic business for profit.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

    a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an 'industry'

in that enterprise.

b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggested that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Devai P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and crafts.

IV. Analysis of Industry by the Hon'ble Supreme court through various judicial pronouncements holds following not to be industry

i. 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.

ii. educational, scientific, research or training institutions; or

iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

iv. khadi or village industries; or hospitals or dispensaries

v. 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

vi. Any domestic service; or

vii. 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

viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide order dated 05-05-2005.

The three judges bench vide order dated 31-1-2002 , in the matter of state of up versus Jaibir Singh referred the matter regarding the question of interpretation of industry to the larger bench.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt it is a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act, the issue of industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to

the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Petition Filed by the Petitioner and interpret the definition of industry accordingly in the interest of workmen.

FILED BY NIDHI,
LEGAL SERVICE COUNSEL-CUM-CONSULTANT,
COUNSEL FOR RESPONDENT No. 2
AOR (CODE-1379)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 1279 OF 2001

IN THE MATTER OF:

STATE OF HARYANA — APPELLANT

VERSUS

OM PRAKASH — RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE RESPONDENT
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 1279 of 2001

IN THE MATTER OF:

STATE OF HARYANA ... APPELLANT

VERSUS

OM PRAKASH ... RESPONDENT

LIST OF DATES ON BEHALF OF THE RESPONDENT

The appellant herein has challenged the order dated 18-03-1999 passed by the high court upholding the directions issued by the labour court regarding reinstatement and the grant of 25% of back wages and further holding that the appellant is an Industry.

Date	Event
Feb 1986	The respondent was engaged by the Forest Guard of the Forest Department of Appellant on daily wages as a Labourer for various Forestry Operations. The respondent worked till September 1993 with breaks.
Sept. 1993	The Respondent was disengaged from work as the said work has completed for which he was engaged.
12.05.1994	The Respondent served a demand notice.
06.12.1994	Thereafter the Respondent filed a claim statement on 06.12.1994 before the Presiding Officer, Labour Court, Hissar.
21.05.1998	The Labour Court vide its award dt. 21.05.1998 held that the workman is entitled to be reinstated on his previous post with continuity of service and 25% back wages. It is pertinent to mention that the Labour Court did not go into the question of whether the Forest Department of the Appellant is an industry. (ANNEXURE P.1). (PAGE 17-27)
/. /. 1999	Being aggrieved the Appellant filed a writ petition specifically stating that the Forest Department of the Appellant is not an industry as such the Labour Court has no jurisdiction to try and give award of

	reinstatement.
13.03.1999	The High Court dismissed the Writ Petiton as being without merit (Impugned).
23.06.2000	Hence, SPL filed.
04.02.2013	Hon'ble Supreme Court has disposed I.A no. 01 of 2012, in this case directing that the services of the respondent shall also be regularized.

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

1. The claimant had been working as a mali continuously from 01.07.82 to 31.12.93 to the entire satisfaction of his superior. Despite that his service was orally terminated on 01.01.94 on the plea that his service was no longer required. His termination was deemed retrenchment, without notice or compensation, and therefore, it is illegal and constitutes an act of unfair labor practice.
2. In the Labour Court it is clearly established that the workman had worked during the year 1993 i.e. the year proceeding the date of his termination which according to his unrebutted testimony as WW-1 is 01.01.94 for more than 240 days.
3. The Labour Court held that the termination of the workman is neither justified nor in order. Hence, the workman is entitled to be reinstated on his precious post of daily wage labourer with continuity of service with 25% back wages.
4. The Appellant contended that the Forest Department is not an Industry. Hence, the award as given by the Labout Court cannot be sustained. But no evidence was place by Appellant to state the Forest Department does not fall under industry.

5. It Is brought to the Notice of this Hon'ble Court That On 04.02.2013, Hon'ble Supreme Court has disposed I.A no. 01 of 2012, by directing that the services of the respondent in this case shall also be regularized, from the date on which his juniors services have been regularize.

"BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given considering the welfare and benefit of the employees. In view of above the Appellant department may be declared as industry and the industrial disputes act is applicable to the Appellant organisation.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the

employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

   Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry. In 1970, in the case of **Management of Safdarjung Hospital v/s. Kuldip Singh Sethi,** . In this case, the issue arises "whether a firm of solicitors constitutes an industry?". And it was held that the essential basis of industrial disputes is that the dispute must arise between capitalist and labour in enterprises were capitalist and labour combine to produce commodities or provide service.

It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

Case of Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.

1. In 1978, in the Landmark case of Bangalore Water Supply and Sewerage Board v. A. Rajappa The the constitution bench has given liberal interpretation to the word industry and held that hospitals, clubs, and educational institutions, research and charitable institutions as industries and this was ruled out in the ratio of 3:2 of Hon'ble judges.

   It overruled its earlier decisions given in the cases of Safdarjung Hospital vs. K.S sethi AIR 1970 SC 1407. National Union of commercial Employees vs. M.R Meher AIR 1962 SC 1080, University of Delhi v. Ram Nath AIR 1963 SC 1873.

   Madras Gymkhana club employees vs. Management of Gymkhana club AIR 1968 SC 554. and cricket club of India vs. Bombay Labour Union AIR 1969 SC 276.

III. **Brief Background and history of legal development of the definition of history by Hon'ble Supreme court through judicial pronouncements**.

Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, 1958 SCC Online SC 4

1. The majority, led by Justice S.K. Das, interpreted the definition of "industrial dispute." The term "any person" in the definition was deemed not to encompass all individuals but those with a direct or substantial interest related to employment, non-employment, terms, or conditions of labor. The Court rejected a broad interpretation.

2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as industrial disputes, contingent on workmen's interest.

3. The majority decision dismissed the appeal, stating that Dr. Banerjee was not a 'workman,' and the dispute did not qualify as an industrial dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay,

1949 SCC Online FC 12

1. That a dispute in regard to the reinstatement of a dismissed employee is a dispute "connected with the employment or non-employment of a person" and is therefore an "industrial dispute" within the meaning of s. 2, cl. (k), of the Industrial Disputes Act, 1947.

2. that the definition of the term "employer" in s. 2, cl. (g), of the said Act is not exhaustive or inclusive and does not limit the application of the Act to undertakings carried on by the Central or Provincial Government or a local authority. The Act applies also to industries carried on by private individuals and associations.

D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619

1. The Act defines "industry" and "industrial dispute" as any business, trade, undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing

society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

2. The meaning of "industry" and "industrial dispute" in a modern society, where disputes were not isolated but rather a result of a continuous process of social evolution. It emphasizes the need for legislation to address the significant problems that arise in the industrial field, ensuring that society remains adaptable and responsive to changing circumstances.

State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44

1. In this case respondents 2 and 3, who were ward servants at J. J. Group Of Hospital in Bombay under state control, were retrenched without compensation, violating S. 25F(b) of the Industrial Disputes Act, 1947. They sought a writ of mandamus from the High Court, but the single judge dismissed it, stating that non-payment of compensation didn't invalidate retrenchment as S. 25I provided a remedy for recovery.

2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

3. This Hon'ble court held that the doctrine of quid pro quo (profit motive) wasn't crucial in determining whether an activity qualifies as an industry.

Corpn. Of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45

1. The question was whether the municipal activities of the Corporation of Nagpur City fell within the definition of 'industry' as per the C.P. and Berar Industrial Disputes Settlement Act, 1947. Disputes arose between the Corporation and its employees, and the State Government referred them to the State Industrial Court. The Industrial Court ruled

that the Corporation and most of its departments were covered by the definition of 'industry.The High Court rejected the contention.

2. The Hon'ble Supreme Court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only activities analogous to trade or business could be industries. It affirmed that if a service rendered by a corporation qualified as an industry, the employees of the departments connected with that service were entitled to the benefits of the Act.

3. The court also ruled that if a municipal department discharged multiple functions, some falling within and some outside the definition of industry, the predominant functions of the department would be the criterion for the purposes of the Act.

University of Delhi v. Ram Nath, 1963 SCC OnLine SC 117

1. The University of Delhi and Miranda House (a college affiliated with the University) were found not to constitute an "industry" under the Industrial Disputes Act, 1947.

2. The Tribunal rejected the appellants' contention and awarded retrenchment compensation to the respondents

3. The Supreme Court held that the work of education, especially in institutions like the University of Delhi, is primarily carried out with the assistance of teachers. Considering the exclusion of the whole class of teachers from the definition in Section 2(s), the court concluded that it could not have been the policy of the Act to treat education as an industry, particularly for the benefit of a minor and insignificant number of subordinate staff.

Cricket Club of India Ltd. v. Bombay Labour Union, (1969) 1 SCR 600.

1. The court pointed out that the income earned by the club, such as rents from immovable properties, was not attributable to the aid and cooperation of employees. The facilities provided, including residential accommodation and catering were primarily for the club members and not in the nature of running a hotel or systematic business for profit.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

    a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prusad or food), prima facie, there is an 'industry' in that enterprise.

    b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

    c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

    d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggests that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung

Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Devai P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and crafts.

IV. Analysis of Industry by the Hon'ble Supreme court through various judicial pronouncements holds following not to be industry

i. 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.

ii. educational, scientific, research or training institutions; or

iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

iv. khadi or village industries; or hospitals or dispensaries

v. 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

vi. Any domestic service; or

vii. 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

viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide order dated 05-05-2005.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act.

The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt is rather a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act. The issue of industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs

through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Civil Appeal Filed by the Petitioner/Appellant and interpret the definition of industry accordingly.

FILED BY NIDHI,
LEGAL SERVICE COUNSEL-CUM-CONSULTANT,
COUNSEL FOR RESPONDENT
AOR (CODE-1379)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1278/2001

IN THE MATTER OF:

STATE OF HARYANA — PETITIONER

VERSUS

HAWA SINGH. — RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE RESPONDENT
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

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IN THE MATTER OF:

STATE OF HARYANA

APPELLANT

VERSUS

HAWA SINGH. RESPONDENT

The petitioner has challenged the order dated 18-03-1999 passed by Hon'ble Punjab and Harayna high court dismissing the Civil Writ petition filed by petitioner/Appellant upholding the order dated 25-08-1998 passed by the labour court reinstating the petitioner with 25% back wages.

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT HAWA SINGH

Date	Event
July 1986	The respondent was engaged by petitioner as labourer on daily wages.
June, 1993	The Respondent was disengaged from work without complying with the provisions of Industrial Disputes Act.
25.08.1998	The respondent approached the labour court by filing a statement of claim reference no. 342/98 and the Labour Court vide its award dt.25.08.1998 held that the Respondent is entitled to be reinstated on his previous post with continuity of service and 25% back wages.**(ANNEXURE P3 Page no. 37 to 48)**
27.02.1999	The petitioner herein challenged the award dated 21-05-1998 before High Court of Punjab and Haryana in civil writ petition No. 3680 of 1999.
18.03.1999	The High court did not agree with the plea that Haryana Forest department is not an industry and dismissed the civil writ petition No. 3680 of 1999.
08-2000	Aggrieved by the Judgment of High Court, Petitioner filed Special Leave Petition before Supreme Court.
31.10.2000	Notice was issued and stay on order of High court was Granted.
02.01.2017	This Hon'ble court referred the matter to larger bench of 9 judges to answer the questions raised in reference order dated 05.05.2005 passed by 5 judges bench in state of U.P. Vs. Jaibir Singh.
18.11.2019	This Hon'ble court disposed of I.A No. 114194 of 2019 and

directed to pay the scale of respondent from this month till disposal.

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for welfare of public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given to the definition of INDUSTRY considering the welfare and benefit of the employees and to prevent their exploitation. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organisation.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. The major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the

government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

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It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

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2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as industrial disputes, contingent on workmen's interest.

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2. The supreme court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only

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Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

    a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and

services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an 'industry' in that enterprise.

b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggested that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Devai P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and crafts.

IV. Analysis of Industry by the Hon'ble Supreme court through various judicial pronouncements holds following not to be industry

i. 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.

ii. educational, scientific, research or training institutions; or

iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

iv. khadi or village industries; or hospitals or dispensaries

v. 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

vi. Any domestic service; or

vii. 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

viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide order dated 05-05-2005.

The three judges bench vide order dated 31-1-2002 , in the matter of state of up versus Jaibir Singh referred the matter regarding the question of interpretation of industry to the larger bench.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt it is a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act ,the issue of industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Petition Filed by the Petitioner and interpret the definition of industry accordingly in the interest of workmen.

FILED BY NIDHI,
LEGAL SERVICE COUNSEL-CUM-CONSULTANT,
COUNSEL FOR RESPONDENT No. 2
AOR (CODE-1379)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
C.A. No. 6471/02

IN THE MATTER OF:

The State of Maharashtra & Anr. ... Petitioner

Versus

Serva Shramik Sangh ... Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT – THE SERVA SHRAMIK SANGH

Background:

1. This Civil Appeal concerns 46 malis and watchmen working in the Forest Department of the State of Maharashtra doing the work of forest conservation, planting of trees, maintaining the nursery for saplings and other related activities. There are thousands of such workers employed on an ad hoc basis by the State of Maharashtra. The stand of the government is that they are not holders of a civil post and hence the Maharashtra Administrative Tribunal has no jurisdiction. Hence the workmen filed a complaint of unfair labour practices under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU& PULP) being complaint ULP No. 270 of 1987. The workmen relied on their long years of continuous service since 1981 and also on the Government's circular dated 31st January, 1996 which sought to regularize all those casual workers who had completed 5 years of continuous service as casual daily wage labourers. This Circular is at page 63 to the additional documents.

2. The Labour Court directed that the workers be regularized. A writ petition was filed by the State of Maharashtra in the High Court being Writ Petition no. 264 of 1995 and the High Court by order dated 21.7.2000 (at page 1 of the Civil Appeal) found that the workmen concerned were working continuously since 1981 and confirmed the order of the Labour Court. In so doing the

High Court followed the three judge bench decision of this Court in the Chief Conservator of Forests versus J.M. Kondhare (1996.2. SCC 293).

3. Leave was granted and a reference made to the Constitutional Bench solely on account of the difference arising between the Chief Conservator of Forests decision and State of Gujarat versus P.N. Parmar { 2001 (9) SCC 713}. The order of reference is specifically restricted to the case of social forests and has been made an order to decide which of the two decisions of the Supreme Court are correct. There is no reference in respect of any other matter relating to any other enterprise other than social forests. It is possible that by erroneously tagging matter together a range of matters have come up before this Hon'ble Court that have nothing to do with the issue as to whether social forestry Department of the Government is an industry within the meaning of 2(j) of the I.D. Act.

4. The National Remote Sensing Agency case has been tagged with the main reference, even though it has nothing to do with social forestry. What is impugned in this court is the decision of the full bench of five judges of the High Court who concluded unanimously that the agency is not connected to the defence ministry and that although it comes under the Space Department the agency sells satellite images to private parties and hence is not part of the sovereign function of the State and is industry.

5. This Hon'ble Court is called upon first of all to answer the reference and to decide as to which of the two decisions above mentioned are correct in view of Bangalore Water Supply. It is possible that while doing so, this Court may come to a conclusion that Bangalore Water Supply was wrongly decided and may hence consider requesting a reference to a larger Bench. Even if this is so, the reference as it stands ought to be answered since there are two contradictory decisions of this Hon'ble Court. Even if a reference to a larger bench is being considered the law ought to be clear as it stands today in view of the decision in

Bangalore Water Supply case. Any changes that may take place if at all, may take place in future but the present position needs to be settled.

6. The questions that may possibly fall for consideration in deciding as to whether a larger bench needs to decide the issues involved are as follows:

a. What is the ratio of Bangalore Water Supply?

b. Is this Court in agreement with the ratio or is the decision flawed?

c. What was the effect of the Bangalore Water Supply and what will be the effect of taking a contrary view?

d. After a passage of fifty years is there a better formulation possible?

7. The question that needs to be asked is whether there was anything so fundamentally wrong with Bangalore Water Supply that it caused practically grave disturbances in industrial relations. Did the fact that Bangalore Water Supply opened the doors of the courts to workers everywhere result in indiscipline and strikes? Did it give rise to industrial unrest? Has it turned out to be practically a decision that has caused turmoil in the relationship between employers and employees? If there is no evidence to suggest such a practical necessity to review the decision, then is the review to be made merely because of the possibility that a more restricted view can be taken or merely because there are mere inconsistencies between different judgments from time to time.

8. Secondly, if no alternative common principle can be found, should the existing framework be jettisoned so that labour and employers land up in an anarchic situation? Is the commercial test i.e. that the enterprise must be geared towards profits, a satisfactory alternative? Are labour courts now to be required to go into balance sheets to ascertain as to whether an enterprise is or is not making a profit? Are charitable institutions with hundreds of employees not required to do basic statutory welfare

internal to the organisation by following basic labour standards or will they flout labour laws with employees having no remedy? Are clubs catering to the rich and employing hundreds of workers to be freed from their duty to implement basic labour laws? Are the scavengers of the municipal corporation to be no longer covered by protective labour legislation?

9. In the absence of a clear alternative to replace the standard set in Bangalore Water Supply and in the absence of any evidence that the law as laid down has worked to the detriment of society, there is **no compelling interest** for this court to reopen the issue.

10. The question has arisen as to why the amendment of 1982 was never brought into force. An explanation has been given that a new legislation was to be simultaneously enacted to cover those workers who were being excluded from the provisions of the I.D. Act. No such legislation could not be drafted as would be more satisfactory than the situation prevailing under the I.D. Act. Recognizing this the legislature acquiesced to non notification of the Bill by making no further attempt to bring the Bill into force. In Rejina versus Secretary [1995 (2) WLR 464] the House of Lords in its majority decision held at page 472 that the courts would hesitate to direct the Secretary of State to notify a law and bring it into force. Thus, though they held that the action of the Secretary was an abuse of power (and therefore, presumably actionable) no direction was issued for the law to be brought into force. In A.K. Roy's case [1982(1) SCC 271] a Constitutional Bench of this court held likewise.

11. Parliament and the legislatures have understood that the framework laid down in Bangalore Water Supply is the best available legal framework. Even the Second Labour Commission in its report at page 330, 331 Vol. I has been unable to come up with a viable definition even as late as 2002. The Second Labour Commission proposal that any establishment employing more than 20 workers will be covered by an omnibus

labour legislation is clearly even more sweeping in its scope than Bangalore Water Supply.

D.N. Banerjee

12. Prior to Banerjee, labour in many enterprises had no access to any court. Since we follow the old English law to the effect that the contract for personal service cannot be specifically enforced and only a suit for damages will lie, workmen had no remedy in any judicial forum in respect of termination of services, malafide transfer and the like. These cases that follow are concerned with access to justice for workers in a large number of enterprises.

13. There is a common thread running through Banerjee, Bangalore Water Supply and the other decisions. This common thread lays down the basic principle on the basis of which labour courts and industrial tribunals will decide whether an activity constitutes an "industry". Such a statement of principle is most important because in the absence of this there is likely to be chaos and anarchy in labour law.

14. Today after fifty years of Banerjee and 25 years of Bangalore labour court judges throughout the country and employees and employers alike fully understand where the law stands. To disturb Bangalore Water Supply is only to create the sort of bizarre situation and chaos that made necessary and led to the decision in Bangalore Water Supply.

15. Twenty years ago every case of an employee was met with three preliminary objections in the written statement of the employers, viz. that the dispute raised was not an industrial dispute within the meaning of the Act, that the enterprise was not an industry and that the employee was not a workman. The situation today is vastly different. The law has settled down. It is clearly understood by all concerned. This is why a decision which has stood the test of time for over fifty years should be allowed to stand.

16. Banerjee held that the word "industry" has to be given a wider import than its ordinary sense, in order to provide for fair adjudication between employers and employees through conciliation officers, boards and tribunals (page 94 and 95 Vol. I compilation)

17. The Court then went into the meanings of the words "calling", service, employment, industrial occupation, avocation of workman and undertaking (page 97 and 98 Vol. I).

18. The court then referred to section 2(n) which defined public utility service and concluded that even municipalities and government bodies would be covered since the activities are capable of being done by a private person.

19. The Court also approved the observations of the Tribunal holding that municipal corporations also come within the definition of "industry" (page 104).

Bangalore Water Supply

20. Bangalore Water Supply was the first in a series of appeals that came to be jointly heard and decided. They included cooperative societies, irrigation departments, hospitals, hotels, research institutions, charitable institutions and others. The facts of the situation pertaining to a wide spectrum of enterprises was available to the court.

21. The court formulated the issues (page 22 para 23)

22. The court defined industry as follows:
    a. As an organized activity not of casual venture (page 18 para 13).
    b. As a cooperative endeavour between employer and employee (page 19 para 14).
    c. Where the result is material end products (page 19 para 15).

d. Where there is systematic operations and collectivity of workmen cooperating with their employer (para 17).

e. Charitable services are industry (page 26 para 31 and 32).

f. Profit motive is irrelevant

g. Waging war, policing, justicing, legislating, tax collection, are prima facie not industry. (Page 28 para 37)

h. It is the carrying out of work relationship, the method of employment and the process of cooperation which makes an activity an industry (page 28 para 38).

i. Core functions: The administration of justice is not industry (page 30 para 40)

j. Public servants and public enterprises are covered by industry (page 31 and 32 para 45, 46).

k. Sovereign functions are not industry (page 33 and 34 para 50 and 51).

l. If the activity can be done by a private person then it is industry (para 53 page 35).

m. Montetary consideration is not an essential characteristic of an industry (page 35 para 54 and 55).

n. Professionals with a large work force are industry (page 48 para 86).

o. Professionals with few labourers are not industry (para 88 page 49.

p. Charitable industries with an organized work force are an industry otherwise they are not. (para 104, 105, 106, 107, 108 page 55, 56).

q. Spiritual enterprises without organized labour are not industry. (para 110 page 57)

r. Charitable institutions are industry (para 111 page 58).

s. Clubs are industry (page 60 para 115, 116)

t. Clubs are not if there is no organized labour (page 62 para 118, 119).

u. Safdarjung hospital case overruled (para 130 – 136 page 66).

v. Courts were paralysed prior to Bangalore (para 138 page 69).

w. The conclusion (para 140 onwards page 70)

8

Decision of Beg J.

23. Rejects the concept of Noscitur a sociis (para 158)

Order of Chandrachud C.J.

24. Rejects the concept of Noscitur a sociis (Para 173, 174)

Hospital Mazdoor Sabha Case (page 106 vol. I)

25. The principle of Noscitur a sociis will apply only when a word in a series has a doubtful meaning, not when words that have a clear and different meanings are used in a series to give the widest possible amplitude to a definition. (para 8, 9, 10 and 11).

26. It is incongruous that a welfare activity would seek to exclude the application of a welfare statute (para 14)

27. Section 2(n)(vi) clearly indicates the intention of the legislature that hospitals fall under 2(j) (para 19).

Agricultural Produce Market case (page 401 vol. III)

28.

29. Section 2(a) itself indicates statutory corporations falling within the definition of industry. (para 19).

30. The Central Act was enacted to bring peace (para 21)

Nagendra Rao's case

31. Doctrine of sovereign function obsolete (page 459 vol. III)

32. **Chief Conservator of Forests Case (page 130 vol. I)**

33. **State of Gujarat case (page 143 vol. I)**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 6471 OF 2002

IN THE MATTER OF: -

The State of Maharashtra & Anr. ...Petitioner

-Versus-

Serva Shramik Sangh ... Respondent

WRITTEN SUBMISSIONS ON BEHALF OF SOLE RESPONDENT

(A) Preliminary Objections:

1. In the review of cases below the consistent line of thinking of this Hon'ble Court, following the Constitutional bench decision in the **Bangalore Water Supply and Sewerage Bd. Vs A. Rajappa (1978) 2 SCC 213** case, is that government departments are normally 'industry' except when they perform core regal functions such as – Justicing, Taxing, Legislating and Defence.

2. In **Chief Conservator of Forest Vs. Jajganath Maruti Kondhare (1996) 2 SCC 293**, this Hon'ble Court was concerned with whether the Forest Department of the Government of Maharashtra was an 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act. This Hon'ble Court had to decide as to whether the State had indulged in unfair trade practice visualized by item 6 of Schedule IV the of the State Act, hence the question as to whether forest department of the State is an Industry, was decided in the affirmative. The Court held:

> "defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power

42

to acquire an retain territory, are functions which are indicative of external sovereignty and are political in nature." (Para 12 at Page 300)

"...we are of view that the same cannot be regarded as a part of alienable or inescapable function of the State for the reason that the scheme was intended even to fulfill 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.

17. This being the position, we hold that the aforesaid 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. We would say the same qua the social foresting work undertaken in Ahmednagar District. There was, therefore, no threshold bar in knocking the door of the Industrial Courts by the Respondents making a grievance about adoption of unfair labour practice by the appellants". (Para 16-17 at Page 301)

3. A discordant note was struck in **Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs Union of India & Anr. (1997) 6 SCC 723** and **Sub-Divisional Inspector Of Post, Vaikam & Ors. Vs. Theyyam Joseph & Ors, (1996) 8 SCC 489,** where two judge benches of this Court, held that Government Departments are normally not 'industry'.

4. On a reference to a larger Court, a three judge bench of this Hon'ble Court in **General Manager, Telecom Vs. A. Srinivasa Rao & Ors.**

43

(1997) 8 SCC 767, held that the decisions in **'Theyyam Joseph and Bombay Telephone Canteen Employees' Association'** (supra) cannot be treated as laying down the correct law. This Hon'ble Court held that: (Para 7 at Page 770)

> "It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply or to by pass that decision so long as it holds the field. Moreover, that decision was rendered long back – nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone canteen Employees' Association cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail"

5. The decision of this Hon'ble Court in **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713**, likewise strikes the same discordant note in holding that: (Para 5 at Page 715)

> "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'. Ordinarily, a department of the government cannot be held to be an industry and rather it is a part of the Sovereign function"
>
> "6. The learned single judge as well as the division bench of the High Court have failed to carefully examine the ratio of

44

this Court's judgement in Jagannath Maruti Kondhare case inasmuch as in para 15 of the said judgement, the Court quoted the assertions made in the affidavit of the Chief Conservator of forest and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry".

and is likewise contrary to the **Bangalore Water Supply** and the judgement of **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar** (Supra) which this Hon'ble Court relied to allow the review petition distinguished the three judge bench decision of **Chief Conservator of Forest & Anr. Vs. Jagganath Maruti Kondhare & Ors. (1996) 2 SCC 293,** stating that the forest department of the State of Gujarat where the clerk was appointed is not an industry.

6. Industry is always defined qua the enterprise or the department as a whole it is not defined qua the work done by the particular workers as held in **Bangalore Water Supply** case (supra). (Para 38 at Page 240)

"So the parity is in modus operandi, in the working – not in purpose of the project nor in disposal of the proceeds but in the organization of the venture, including the relations between the two limbs viz., labour and management. If the mutual relations, the method of employment and the process of co-operation in the carrying out of the work bear close resemblance to the organization, method,

45

remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kernel of the decision. An activity oriented not motive based analysis".

The exact nature of duties performed may be relevant in deciding whether the person is a workman or not, but it is not relevant in deciding the issue of 'Industry'. The decision of this Hon'ble Court in the **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar's** case (supra) holding the Forest department to be not 'Industry' because two "clerks" working therein did not specifically state the nature of their duties is clearly erroneous and contrary to **Bangalore Water Supply** case (supra).

7. Similarly, the reasoning on the basis of which the three-judge bench decision in **Chief Conservator of Forest & Anr. Vs. Jagganath Maruti Kondhare & Ors. (1996) 2 SCC 293** has been distinguished in the **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar's** case (supra) is contrary to law.

8. In any case the nature of duties performed by the workmen concerned in this case has clearly come on record. The workmen concerned were working as 'malis' and 'watchman' in the Forest department and they were employed for work such as maintenance and watering of plants. In fact ground 'D' of the petition sets out the work as under:

> "*employees at nursery are employed for maintenance of plants, watering of plants etc.*"

9. Moreover, the objection relating to 'industry' was taken by the employer. It is well settled that the burden of proof is on the person who makes the assertion. The ratio of **State of Gujarat Vs. Pratamsingh Narsinh Parmar** case (supra) to the effect that the burden of proof lies on the

workman is erroneous. In this case no evidence was led by the employer to substantiate the plea that Forest department was not an 'Industry'. In short the objection was taken as an empty formality.

(B) BRIEF FACTS OF THE CASE

10. In 1987, the Petitioner union therein filed Complaint (ULP) No. 270/ 1987 before the Industrial Court, Ahmednagar. Forty Six (46) workmen employed as 'watchmen' and 'malis' in the forest nursery had worked for a period of 7 years. The nature of work carried out by the Petitioners therein was similar to that of the permanent employees yet these workmen were deprived of benefits, which are normally accorded to a permanent employee. In their complaint the Union prayed 'inter alia' for permanency and monetary benefits.

11. On 14.07.1992, the Industrial Court allowed the complaint filed by the workmen. The Industrial Court gave a finding that Forest department had indulged in 'unfair labour practices' according to item no. 6 of Schedule IV of the Industrial Disputes Act, 1947. It ordered the Forest Department to confirm and make permanent all those employees (except the employees at serial Nos. 9, 41 and 44, who had not put service of 240 days) along with all attendance benefits.

12. The Forest department filed Writ Petition No. 264 of 1996 before the Bombay High Court of Judicature at Bombay. The Bombay High Court dismissed the Writ Petition No. 264 of 1996 by order dated 21.7.2000 and the same is impugned herein. The High Court observed that all the employees were employed from 1981 and they were continuously employed from 1981. They worked in nursery. It could not be said that the work was of casual/ temporary or seasonal nature. The relevant findings in

47

order dated 21.7.2000 of the Bombay High Court in Writ Petition No. 264 of 1996 is enumerated herein below:

> "The said chart was treated as an authentic document in respect of the working days of the employees by the industrial court and rightly so. On the basis of the said chart the learned Member of the Industrial Court has found that the concerned employees where continued us casual/ temporary for years and that they had completed more than 240 days continuous employment in each year. The Industrial Court has found that all these employees were employed from 1981 and were continuously employed since than. The Industrial Court has concluded that the concerned employees were in employment for years together i.e. for a period of more than 6 years continuously. On the basis of their continuous employment the learned Industrial Court has concluded that the work of nursery in the forest department was always available and therefore, it could not be said that the work was of casual/ temporary or seasonal nature.
>
> ...I cannot find any fault with the said finding of fact of the learned Member of the Industrial Court."

13. On 16.04.2001 the Forest department filed S.L.P. (C) No. CC 3996 of 2001 against order dated 21.7.2000 in Writ Petition No. 264 of 1996 of the Bombay High Court and the same was listed and dismissed on 11.07.2001.

14. The Forest department filed Review Petition (C) No. 1583 of 2001 relying on the decision of a 2 judge bench of this Hon'ble Court in **Pratamsingh Narsinh Parmar's** case (supra). The said Review Petition was circulated to the Hon'ble Judges in chambers on 12th December 2001 wherein their lordships condoned the delay and issued notice and the said review petition was listed before this Hon'ble Court on 22 February 2002.

15. This Hon'ble Court on 22 February 2002 passed orders allowing the said review petition, on the basis of **Pratamsingh Narsinh Parmar's** case

(supra) wherein it was held that a government department cannot be held to be an 'Industry' but a part of the sovereign function. By order dated 22.02.2002 the order dismissing the S.L.P. was recalled and notice issued (S.L.P (C) 12272 of 2001/Civil Appeal 6471 of 2002). The order dated 22.2.2002 of this Hon'ble Court is enumerated herein below:

> "After hearing the counsel for the parties, we allow the review petition. Order dated 11th July 2001 is recalled and the special leave petition is restored on it's file.
> Issue notice in the special leave petition.
> Mr. R.K.M Singh Adv accepts notice.
> Counter affidavit be filed within four weeks and rejoinder within two weeks thereafter. List after six weeks."

(C) REVIEW OF CASES:

16. In **D.N Banerji Vs. P.R Mukherjee & Ors. (1953) SCR 302** this Hon'ble Court held:

> "A public utility service such as railways, telephones and the supply of power light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after introduction of local self government this work has in almost every country been assigned as a duty local bodies like our Municipalities or District Boards or local boards. A dispute between employers and workmen is an industrial dispute."

17. The seven judge bench in the case of **Bangalore Water Supply and Sewerage Bd. Vs A. Rajappa (1978) 2 SCC 213**, posed the question relating to whether a government department would fall within the definition of 'industry' in the following manner: (Para 23 at Page 234)

> "Are governmental functions, stricto sensu, industrial and if not, what is the extent of the immunity of instrumentalities of governments?"

49

It was answered thus:

"Merely because the employer is a government department or a local body the enterprise does not cease to be an industry" (Page 236)

"A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on, by private companies or business corporations. Even conservancy or sanitation may b e so carried on, though after the introduction of local self-government this work has in almost every country been assigned as duty to local bodies like municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute" (Page 237)

"Governments and municipal and statutory bodies may run enterprise which do not for that reason cease to be industries" (Page 240)

"... war waging, policing, justicing, legislating, tax collecting, and the like are, prima facie pushed out (Page 240)

"So, the parity is in modus operandi, in the working – not in purpose of the project nor in disposal of the proceeds but in the organization of the venture, including the relations between the two limbs viz., labour and management. If the mutual relations, the method of employment and the process of co-operation in the carrying out of they work bear close resemblance to the organization, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kemel

50

of the decision. An activity oriented not motives based analysis." (Page 240)

The Hon'ble Court to have a wider approach took a glance at the internationally recognized concepts vis-à-vis 'industry'. While quoting from Freedom of Association, second Edition, and 1976 which is a digest of decisions of the Freedom of Association Committee of the Governing body of the ILO on the issue of Civil Servants and other workers in the employment of the State the committee opined that: (Para 46 at Page 244)

> "251. ...the exclusion form the scope of the convention of persons employed by the State or in public sector, who do not act a s agents of public authority is contrary to the meaning of the convention.
>
> (255) The committee pointed out that Convention 98, dealing with the promotion of collective bargaining, covers all public servants who do not act as agents of public authority, and consequently, among these employers of the postal and telecommunication service."

The committee further pointed out that:

> "(256) Civil aviation technicians working under the jurisdiction of the armed forces cannot be considered ... as belonging to armed forces."

All these were discussed to give a widest possible ambit to the concept of industry, which can be gauged from following: (Para 50 at Page 245-6)

> "Sovereign functions of the State cannot be included although what such functions are has been aptly termed' the primary and inalienable' functions of a constitutional government" (Page 246)

51

The Hon'ble Court, included following in the definition of Industry.

i) Tax Department, Health Department at page 251 of the judgment.

ii) General Administration Department (Page 252)

According to the Hon'ble Court

> "The question is not whether the discharge of certain functions by the corporations have statutory backing, but whether those functions can equally be performed by private individuals" (Page 252)

This Hon'ble Court defined the concept of the undertaking as:

> "... As a working principle it may be stated that an activity systematically or habitually undertaken for production or distribution of goods or for rendering of material services to the community at large or part of such community with help of employees is an undertaking. Such an activity generally involves co-operation of the employer and the employee; and its object is satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material services to the community can be regarded as some of the features which are distinctive of activities to which section 2 (j) applies. Judged by this test there would be no difficulty in holding that the State is

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carrying on an undertaking when it runs the group of hospitals in question." (Para 71 at Page 254)

"Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the government or statutory bodies" (Page 284)

18. In **Union of India Vs. Jai Narain Singh (1995) Supp 4 SCC 672** this Hon'ble Court without giving any reason held that the Central Ground Water department is not an industry.

19. In **Chief Conservator of Forest Vs. Jajganath Maruti Kondhare (1996) 2 SCC 293**, this Hon'ble Court was concerned whether the Forest Department of the Government of Maharashtra was an 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act. This Hon'ble Court had to decide as to whether the State had indulged in unfair trade practice visualized by item 6 of Schedule IV the of the State Act, hence the question as to whether forest department of the State is an Industry, was decided in the affirmative. This Hon'ble Court held:

"defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire an retain territory, are functions which are indicative of external sovereignty and are political in nature." (Para 12 at Page 300)

The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore water supply case would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly

understood sovereign function, welfare activities of the State would come within the purview of the definition of Industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable." (Para 13 at Page 300)

"...we are of view that the same cannot be regarded as a part of alienable or inescapable function of the State for the reason that the scheme was intended even to fulfill 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.

17. This being the position, we hold that the aforesaid 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 We would say the same qua the social foresting work undertaken in Ahmednagar District. There was, therefore, no threshold bar in knocking the door of the Industrial Courts by the Respondents making a grievance about adoption of unfair labour practice by the appellants". (Para 16-17 at Page 301)

20. In **Sub-Divisional Inspector of Post, Vaikam & Others Vs. Theyyam Joseph and Others, (1996) 8 SCC 489**, this Hon'ble Court once again without giving any reason held that: (Para 11 at Page 493)

"It is now settled law of this Court that these employees are civil servants regulated by these conduct rules. Therefore, by

54

necessary implication, they do not belong to the category of workmen attracting the provisions of the Act."

21. In **Executive Engineer (State of Karnataka) Vs. K. Somasetty & Ors. (1997) 5 SCC 434**, without reasons, this Hon'ble Court held that it is now well settled legal position that the Irrigation Department and Telecommunication Department are not 'Industry'. In so concluding this Hon'ble Court relied upon **Union of India Vs. Jai Narain Singh (1995) Supp. (4) SCC 672**, and **State of Himachal Pradesh Vs. Suresh Kumar Verma (1996) 7 SCC 562.**

22. Reliance placed on Jai Narain Singh's case (supra) and Suresh Kumar Verma's case (supra) was misplaced because Jai Nairain Singh's case (supra) was a conclusion without a reason and **Suresh Kumar Verma's case (1996) 7 SCC 562** does not deal with the issue of the 'Industry' at all.

23. In **Bombay Telephone Canteen Employees' Vs. Union of India (1997) 6 SCC 723** a two Judge Bench of this Hon'ble Court held that the Bombay Telephone Exchange was not an 'Industry'. Relying upon decision of this Court in Theyyam Joseph's case, this Hon'ble Court again held that even though the activities of the Corporation partake the character of a private enterprise since the workmen engage themselves in rendering services, it is not an industry.

24. In **General Manager Vs. A Srinivasa Rao (1997) 8 SCC 767** the two judge bench decision in **Theyyam Joseph** and **Bombay Telephone Exchange** (supra) came to be questioned before a three Judge bench which on a reference held: (Para 7 at Page 770)

"It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view

55

contrary to that in Bangalore Water Supply or to by pass that decision so long as it holds the field. Moreover, that decision was rendered long back – nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore water Supply case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone canteen Employees' Association cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail"

25. In **Des Raj & Ors. Vs. State of Punjab & Ors. (1998) 2 SCC 537** this Hon'ble Court held that the irrigation department is an 'industry'. It was thus held that: (Para 13 at Page 556)

"On the tests, as already laid down in the judgments, we do not think these facts found in the case can take out the Irrigation Department outside the purview of the definition of 'industry'. We have already referred to the dominant nature test evolved by Krishna Iyer, J. the main functions of irrigation department were subjected to the Dominant nature test clearly come within the ambit in industry." (Para 13 Page 556)

26. In **All India Radio Vs. Santosh Kumar (1998) 3 SCC 237**, it was held that functions which are carried on by All India Radio and Doordarshan cannot be said to be functions which are of a purely sovereign nature.

27. In **Agricultural Produce Marked Committee Vs. Ashok Harikuni, (2000) 8 SCC 61** it was held that every governmental function need not be sovereign. The court thus held that:

"... What is approved to be 'sovereign' is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory ... Hence, ever governmental function need not be sovereign" (Para 21 Page 75).

Thus Agricultural Produce Market Committee was held to be 'industry'. (Para 35 page 81)

28. The decision of this Hon'ble Court in **State of Gujarat Vs. Pratham Singh Narsinh Parmar (2001) 9 SCC 713** to the effect that: (Para 5 at Page 715)

"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'. Ordinarily, a department of the government cannot be held to be an industry and rather it is a part of the Sovereign function"

"6. The learned single judge as well as the division bench of the High Court have failed to carefully examine the ratio of this Court's judgement in Jagannath Maruti Kondhare case inasmuch as in para 15 of the said judgement, the Court quoted the assertions made in the affidavit of the Chief Conservator of forest and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion

57

of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry".

and is likewise contrary to the **Bangalore Water Supply** and the judgement of **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar** (Supra) which this Hon'ble Court relied to allow the review petition distinguished the three judge bench decision of **Chief Conservator of Forest & Anr. Vs. Jagganath Maruti Kondhare & Ors. (1996) 2 SCC 293,** stating that the forest department of the State of Gujarat where the clerk was appointed is not an industry.

Similarly, the reasoning on the basis of which the three-judge bench decision in **Chief Conservator of Forest & Anr. Vs. Jagganath Maruti Kondhare & Ors. (1996) 2 SCC 293** has been distinguished in the **State of Gujarat & Ors Vs. Pratamsingh Narsinh Parmar's** case (supra) is contrary to law.

(D) Submissions:

a) This case is squarely covered by the **Bangalore Water Supply** case (supra) and **Chief Conservator of Forest Vs. Jagannath Maruti Kondhare** (supra).

b) **Pratamsingh Narsinh Parmar's** case (supra) is contrary to both and deserves to be overruled.

c) Burden of establishing that the establishment is not Industry lies on the employer not the workmen. **Pratamsingh Narsinh Parmar's** case (supra) is erroneous in putting the burden on the employee.

58

d) In any case the admitted facts on record show that workers were working as 'malis' and 'watchman'.

In the facts and circumstances stated herein above the Respondent respectfully submit that this Hon'ble Court may be pleased to dismiss the Civil appeal with costs.

Filed by

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Dated: 8th February 2005
Place: New Delhi.

INDEX

IN THE SUPREME COURT OF INDIA
CIVIL APPELLANT JURISDICTION

CIVIL APPEAL NO.897/2002

IN THE MATTER OF:

STATE OF UTTAR PRADESH APPELLANT

VERSUS

JAI BIR SINGH RESPONDENTS

AND

IN THE MATTER OF:

CIVIL APPEAL NO.8597 OF 2001

Ram Ji Singh & Ors. APPELLANTS

Versus

State of U.P. & Ors. RESPONDENTS

WRITTEN SUBMISSION ON BEHALF OF

INDIRA JAISING & BHARAT SANGAL,

SENIOR ADVOCATES

OVERVIEW

The nine-Judge Bench in these appeals is called upon to resolve two foundational questions in Indian labour law: first, whether the "triple test" laid down in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 ("BWS") continues to govern the definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947 ("ID Act"); and second, what activities may be excluded as "sovereign functions" from that definition. It is submitted with respect that the triple test is sound in law and principle, and that sovereign functions must be confined to the primary, inalienable acts of statehood.

These submissions develop two propositions: (A) the triple test is good law, supported by subsequent legislative endorsement in the Industrial Relations Code, 2020 ("IR Code"), brought into force on 21 November 2025, and justified by the principled reasons offered by Krishna Iyer J. in BWS; and (B) sovereign functions refer only to the primary and inalienable activities of the State.

These submissions are without prejudice to the fact that the definition in the new code of industry is liable to be challenged in an appropriate proceeding.

I. SUBMISSIONS

A. THE 'TRIPLE TEST' IS GOOD LAW AND SHOULD BE REAFFIRMED

A.1 The Industrial Relations Code, 2020 Codifies the Triple Test and Confirms Legislative Intent

1. The IR Code, which repeals and supersedes the ID Act, defines *"industry"* as Section 2(p), IR Code:

> *"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;"

The Central Government brought the IR Code into force on 21 November 2025.

2. It is submitted that the Code preserves the three core elements that Krishna Iyer J. identified in BWS: a systematic activity; carried on through employer-employee cooperation, for the production or distribution of goods or services. The congruence between the two definitions is not accidental; it reflects considered parliamentary acceptance of the triple test formulation over the course of several decades of deliberation.

3. Further, Parliament has expressly retained the exclusion for sovereign functions while confining it to defence research, atomic energy and space, a point addressed in greater detail under Part B below.

4. Finally, the 1982 Amendment to the ID Act would have introduced a definition of *"industry"*, but it was never brought into force and has now been superseded by the Code. The Hon'ble Court in the case of ***Coir Board, Ernakulam and Cochin v Indira Devi*** **(1998) 3 SCC 259**, also analysed the Statement of Objects and Reasons for the Amending Act 46 of 1982, wherein Clause 2 has express reference to BWS:

"*In fact, in 1982, the Legislature itself decided to amend the definition of `industry' under the Industrial Disputes ACT, 1974 by enacting the Amending Act 46 of 1982. In the Statement of Objects and Reasons for the Amending Act 46 of 1982, Clause 2 expressly refers to the decision of this Court in Bangalore water Supply and Sewerage Board (Supra) and the wide interpretation given to the definition of the term industry in the Industrial Disputes Act. The Statement of Objects and Reasons states, inter alia, as follows :-*

"*The Supreme Court in its decision in the Bangalore Water Supply and Severage 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 into he 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 atmospheres different from that in industrial undertaking 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....." Unfortunately, despite the legislative mandate the definitions not been notified by the Executive as having come into force."

Legislative inaction for over forty years, followed by codification of a definition that mirrors BWS, is strong evidence that Parliament accepted the interpretation this Court adopted in 1978.

5. It is submitted that the reason this definition did not come into effect was the failure to establish an alternative dispute mechanism. It does not show any inherent issue with the Krishna Iyer J.'s definition in BWS. Rather, on the contrary, the Amendment Act, along with the 2025 IR code, is conclusive evidence of legislative approval of the triple test and Krishna Iyer's formulation in BWS. Both the 1982 Amendment and the 2020 Code clearly show that these are

attempts to take out certain institutions from the definition of industry, which otherwise would have fallen under its ambit. This shows that the triple test is the standard, and further legislative intent has been merely to remove certain institutions.

6. It is settled that subsequent legislation may be used as an interpretive guide to understanding the policy behind earlier enactments, particularly where the later statute codifies a common-law or judge-made rule, **M/s Anand Brothers (P) Ltd. (Tr. M.D.) v. Union of India, (2014) 9 SCC 212**:

> "*We are referring to these developments for it is one of the well known canons of interpretation of statues that when an earlier enactment is truly ambiguous in that it is equally open to diverse meanings, the later enactment may in certain circumstances serve as the parliamentary exposition of the former. (See: Ram Kishan Ram Nath v. Janpad Sabha AIR 1962 SC 1073 and Ghanshyam Dass v. Dominion of India (1984) 3 SCC 46 at 58*)."

Also see **Ghanshyam Dass v. Dominion of India (1984) 3 SCC 46 at 58**:

> "*Nevertheless the Courts must have due regard to the change in law brought about by sub- s.(3) of s.80 of the Code introduced by the Amendment Act w.e.f.*

February 1, 1977. Such a change has a legislative acceptance of the rule of substantial compliance laid down by this Court in Dhian Singh Sobha Singh and Raghunath Dass."

7. Here, the IR Code does more than codify; it operates as a legislative endorsement. If Parliament had wished to overrule BWS, the repeated parliamentary opportunities since 1978 would have been the occasion to do so. It is therefore submitted that the definition of *"industry"* in the IR Code demonstrates clear evidence of legislative intent to affirm the triple test.

8. In any case, the 2020 Code, which has been enforced in 2025, does not provide for any retrospective application till 21 November 2025. When the code was brought into force, the old act and therefore the interpretation of Krishna Iyer J. will operate. After the new act, the formulation will continue with the triple test, though with new exclusions; the triple test does not go away.

A.2 The Principled Foundations of the Triple Test

9. Beyond statutory endorsement, the triple test rests on durable principles that this Court should reaffirm. The judgment of Krishna Iyer J. in BWS is a jurisprudential statement that attempts to protect workers' rights through the relationship between labour.

10. Krishna Iyer J. held that the ID Act:

"*Avoiding Scylla and Charybdis we proceed to decipher the fuller import of the definition. To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects Labour, promotes their contentment and regulates situations of crisis and tension where production may be imperiled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both- not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit but also its sense.*"

11. It is a beneficial legislation designed to bring industrial peace by providing for the resolution of disputes between employers and employees. Beneficial legislation, once enacted, must be construed liberally so as to advance the remedy and suppress the mischief. A restrictive reading of *"industry"* that excluded swathes of organised productive activity would frustrate the legislative purpose. His

Lordship observed that the legislative history of the ID Act showed a consistent parliamentary intention to protect workers wherever an employer-employee relationship and productive activity co-existed, regardless of the formal character of the employer.

12. The triple test asks what an entity does, not what it calls itself or who owns it. Krishna Iyer J. reasoned:

> "*An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives, now, economic utilities-material goods and services, not transcendental flights nor intangible achievements-are the functional focus of industry. Therefore, no temporal utilities, no, statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products. This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable*."

That the courts must look to the functional reality of the enterprise rather than its juristic form or departmental

label. An establishment that systematically organises labour to produce goods or services for the public is an industry whether it is run by a private corporation, a municipal body, a government department or a statutory authority. This functional approach prevents the law from being evaded through the simple device of governmental incorporation or departmental classification.

13. Krishna Iyer J. grounded the expansive reading of *"industry"* in Part IV of the Constitution. Articles 38, 39 and 43 impose on the State an obligation:

> "*The functional focus of this industrial legislation and the social perspective of Part IV of the Paramount Law drive us to hold that the dual goals of the Act are contentment of workers and peace in the industry and judicial interpretation should be geared to their fulfilment, not their frustration. A worker-oriented statute must receive a construction where conceptually. The keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter-alia, in Articles 38, 39 and 43.*"

to secure just and humane conditions of work, a living wage, and an adequate means of livelihood. These Directive Principles must inform the construction of social welfare legislation. A narrow reading of *"industry"* that excludes government-run enterprises from labour regulation is inconsistent with the constitutional imperative to extend,

not restrict, the protection of working people. The triple test, by giving effect to the broad legislative purpose of the ID Act, honours those constitutional commitments.

14. These reasons remain as compelling today as they were in 1978. The respondent submits that the nine-Judge Bench should reaffirm all five and should decline to narrow the triple test in any respect.

A.3 Addressing the 2005 Reference Doubts and the Legislative Resolution

15. The 2005 reference in these very appeals expressed doubts about the precedential weight of Krishna Iyer J.'s opinion:

> "*In any case, no such inhibition limits the power of this Bench of five judges which has been constituted on a reference made due to apparent conflict between judgments of two benches of this Court. As has been stated by us above, the decision of Bangalore Water is not a unanimous decision. Of the five Judges who constituted majority, three have given a common opinion but tow others have given separate opinions projecting a view partly different from the views expressed in the opinion to see the opinions delivered by the other judges subsequent to his retirement. Krishna Iyer J., and the two judges who spoke through him did not have the benefit of the dissenting opinion*

of the other two judges and the esparto, partly dissenting opinion of Chandrachud J. as those opinions were prepared and delivered subsequent to the delivery of the judgment in the Bangalore Water case."

16. Merely the fact that separate opinions were given at separate times is not a ground to overturn a verdict. It must be kept in mind that, except for the dissent, everyone agreed on the principles of the triple test and therefore formed a majority view. The difference between Beg CJ and Chandrachud J was on an even narrower sovereign function exception.

17. The judgment has governed Indian labour law for nearly five decades with massive reliance by labour tribunals and High Courts across the country. The doctrine of stare decisis applies with full force to a seven-Judge Bench decision of this Court that has generated such extensive institutional reliance.

18. Parliament's deliberate inaction on the 1982 Amendment for over forty years, followed by near-verbatim codification of the triple test in Section 2(p) of the IR Code with calibrated exclusions only for wholly charitable institutions and narrowly illustrated sovereign functions, constitutes conclusive legislative affirmation of BWS. If

Parliament shared the 2005 reference's misgivings, it had ample opportunity to act; it chose instead to codify.

19. Any perceived expansion of labour litigation is the price of extending industrial peace and worker protection to organised economic activity; the remedy lies in procedural reform and the calibration of legitimate exclusions, not in contracting the substantive right. The triple test has proved workable, objective, and constitutionally aligned over nearly half a century; it should be reaffirmed without qualification. The major problem in the working of the labour industry doesn't arise from definitions of workmen, industry, etc it arises because of the unwillingness of employers to comply with various labour laws.

B. "SOVEREIGN FUNCTIONS" REFERS ONLY TO THE PRIMARY AND INALIENABLE ACTIVITIES OF THE STATE

B.1 The Jagannath Maruti Kondhare Judgement Is Correct, and Is Confirmed by This Court's Consistent Jurisprudence

20. In ***Chief Conservator of Forests v. Jagannath Maruti Kondhare***, (1996) 2 SCC 293 ("**Jagannath Maruti Kondhare Case**"), the Supreme Court applied BWS and held that the social-forestry scheme of the Forest Department was an *"industry"* under the ID Act. The

department contended that its work partook of sovereign functions and was therefore immune from labour regulation. The Court rejected this contention and held that:

> "*11. As to which function could be, and should be, taken as regal or sovereign function has been recently examined by a Bench of this Court, to which one of us (Hansaria, J.) was a party. This was in Nagendera Rao and Co. v. The State of Andhra Pradesh , in which case Sahai, J. Speaking for the Bench examined this question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of sovereign immunity. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the old and archaic concept of a sovereignty does not survive as sovereignty now vests in the people. It is because of this that in the aforesaid Australian case the distinction between sovereign and non-sovereign functions was categorised as regal and non-regal. In some cases the expression used is State function, whereas in some Governmental function.*
>
> *12. We may not go by labels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of Nagendra Rao's*

case. As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non sovereign power has largely disappeared.

13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water-Supply case would get eroded, and substantially. We would demur to do so on

the face what was stated in the aforesaid case according to which except the ***strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as' industry if substantially severable****.*

… 16. The aforesaid being the crux of the scheme to implement which some of the respondent were employed, we are of the view that the same 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."*

Activities that could equally be carried on by private agencies, such as afforestation, recreational forestry and allied welfare work, do not qualify.

21. It is submitted that the verdict judgment represents a correct statement of the law. It faithfully applies the test formulated in BWS. Krishna Iyer J. held that :

"*Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.…*

The regal functions described as primary and inalienable functions of the State, though statutorily delegated to a corporation, are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power"

Beg CJI held that:

"*As regards the sovereign or regal functions the term is a misfit in a Republic where the citizen shares the political sovereignty... What is meant by these terms in relation to activities of the State is more accurately brought out by using the term 'governmental functions'...*

"Therefore, only those services which are governed by separate rules and constitutional provisions such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."

Chandrachud J, as he then was, in his concurrence held that:

"The nature of the activity is the determining factor and that does not change according to who

> undertakes it. … conceivably a defence establishment, a mint, or a security press can be an industry even though these activities are ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions"

22. It is submitted that Krishna Iyer's formulation of the sovereign is the baseline on which the majority (5/7) agreed, and Beg J. & Chandrachud J. wanted to take it even further. However, the statement of Krishna Iyer J. has been relied upon and affirmed for the past 50 years, and is a good position of law.

23. Overruling the judgment would create a vast, unprincipled exemption from labour regulation for all government departments engaged in welfare, service or developmental work, contrary to the constitutional commitment to protecting workers articulated in Part IV of the Constitution.

24. This narrow conception of sovereign function aligns with the constitutional evolution towards a republican democracy in which sovereignty vests in the people and the State functions as a trustee bound by the rule of law, rather than an entity that inherits the feudal-style immunities of the colonial era.

25. This understanding of sovereign functions has been consistently maintained across this Court's jurisprudence well beyond the industrial disputes context. In ***N. Nagendra Rao & Co. v. State of Andhra Pradesh*, (1994) 6 SCC 205**, this Court held, in the context of State tortious liability:

> "*In Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity*."

The demarcation between sovereign and non-sovereign activities has been progressively narrowed across public law domains precisely to ensure accountability and to prevent those in organised employment relationships from being denied protection by appeal to outdated absolutes. Crucially, this Court in that case expressly cautioned that extending the concept of sovereign function to include

welfare activities would substantially erode the ratio of BWS. That caution, issued in 1994, applies with equal and renewed force to the reference before this Bench today.

26. In ***Agricultural Produce Market Committee v. Ashok Harikuni*, (2000) 8 SCC 61**, this Court, through A.P. Misra J. expressly following BWS and the Jagannath Maruti Kondhare case held that:

> "*So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions* ***are primary inalienable functions which only State could exercise****. Thus, various functions of the State, may be ramifications of 'sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State*

would not make any such enterprise sovereign in nature.…

In view of the aforesaid settled legal principle the width of "industry" being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character.?'

This formulation has never been doubted. Similarly, in ***General Manager, Telecom v. A. Srinivasa Rao*, (1997) 8 SCC 767**, this Court held that the Telecommunications Department of the Government of India is an industry under the ID Act, since it is engaged in a commercial activity and its functions do not partake of any sovereign character.

27. In the **Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161,** the Hon'ble Court held in context of contract labour:

"*But if we want the fundamental rights to become a living reality and the Supreme Court to become a real sentinel on the quivive, we must free ourselves from the shackles of outdated and outmoded assumptions and*

bring to bear on the subject fresh outlook and original unconventional thinking."

28. It is submitted that in the modern world as it now exists, even police functions, some element of army function, atomic energy, space, and defence have been opened to private players. There also, once they are in hand of a private player in terms of the judgement of **Ashok Harikuni**, supra, such activities would also go out of the four corners of sovereign function.

29. Recent decisions confirm that the Jagannath Maruti Kondhare Case's approach is sound. In ***Vallabhbhai Patel Chest Institute v. Nishikesh Tyagi, 2024 SCC OnLine Del 1214*** it was held relying on BWS that a government-run hospital is not exercising a sovereign function; in ***S.P. Bhardwaj v. Archaeological Survey of India (CGIT-cum-Labour Court-II, New Delhi, 2024),***[1] it was held that preserving monuments is not a sovereign function. These cases show that the Jagannath Maruti Kondhare Case's rationale has been consistently and correctly applied in the lower courts.

30. Jagannath Maruti Kondhare, decided by a bench of three Judges, further prevails over the divergent two-Judge view in ***State of Gujarat v. Pratamsingh Narsinh***

Parmar **AIRONLINE 2001 SC 275** that social forestry is a welfare scheme exempt as sovereign. The thin factual distinction made by the Hon'ble Court:

> "*6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in the Jagannath Maruti Kondhare's case (supra), in as much as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State****. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry".*** *In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.*"

It is submitted that this factual distinguishing does not represent any deviation from the broader standard laid down by Jagannath Maruti Kondhare, and being a lower bench, it is bound to follow it. Therefore there is no conflict between these two cases. (apparent or otherwise).

B.1A Addressing the 2005 Reference Critique: The Part IV Inversion and Beg CJ's Concurrence

31. The 2005 reference took notice of arguments that mentioned:

> "*It is submitted that in a constitutional democracy where sovereignty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the Directive Principles of State Policy contained in Part IV of the Constitution are `sovereign functions'. To restrict the meaning of `sovereign functions' to only specified categories of so called `inalienable functions' like Law and Order, Legislation, Judiciary, Administration and the like is uncalled for. It is submitted that the definition of `industry' given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of `systematic organized activities' undertaken by the State and even individuals engaged in professions and philanthropic activities.*"

With respect, this submission inverts the constitutional scheme. Part IV imposes duties on the State to pursue

certain social and economic objectives; it says nothing about how those objectives must be pursued. The manner of performance remains functional and non-sovereign when the activity is delegable and is routinely performed by private agencies, NGOs and civil-society organisations.

32. Treating every Directive Principle obligation as a sovereign function would render the triple test an empty formality and create precisely the unaccountable law unto itself zone that the rule of law forbids. It would also produce the paradox that the more seriously the State discharges its Part IV responsibilities, the less accountable it would be to the workers who carry out those responsibilities. That result cannot be what the Constitution intends.

33. Furthermore, the 2005 questions the authority of sovereign function formulation by Krishna Iyer J. by highlighting that:

> "*What is to be noted is that the opinion of Krishna Iyer J on his own behalf and on behalf of Bhagwati and Desai JJ was only generally agreed to by Beg CJ who delivered a separate opinion with his own approach on interpretation of the definition of the word 'industry'. He agreed with the conclusion that Bangalore Water Supply and Sewerage Board is an 'industry' and its appeal should be dismissed but he made it clear that since the judgment was being delivered on his last*

working day which was a day before the day he was to retire, he did not have enough time to go into a discussion of the various judgments cited, ***particularly on the nature of sovereign functions of the State*** *and whether the activities in discharge of those functions would be covered in the definition of 'industry'."*

34. It is submitted that Beg CJ's concurring opinion in BWS further reinforces the narrow exception and does not support the broader reading that the 2005 reference attributed to it. He held:

"*I have contented myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of my learned brother Iyer and I also endorse his reasoning almost wholly but even more because the opinion I have dictated just now must be given today if I have to deliver it at all. From tomorrow I cease to have any authority as a Judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those on what are known as "sovereign" functions.*

I will, however, quote a passage from State of Rajasthan v. Mst. Vidyawati & Anr.(1) where this Court said: "In this connection it has to be remembered that under the Constitution we have established a welfare state, whose functions are not confined only to

maintaining law and order but extend to engaging in all activities including industry, public transport, state trading, to name only a few of them. In so far as the State activities have such wide ramifications involving not only the use of sovereign powers but also its powers as employers in so many public sectors, it is too much to claim that the State should be immune from the consequences of tortious acts of its employees committed in the course of their employment as such."

I may also quote another passage from Rajasthan State Electricity Board v. Mohan Lal(2) to show that the State today increasingly undertakes commercial functions and economic activities and services, as part of its duties in a welfare state. The Court said there : "Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Art. 19(1) (g). In Part IV, the State has been given the same meaning as in Art. 12 and one of the Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Art. 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Art. 298 to carry on any trade or business. The

circumstances that the Board under the Electricity Supply Act is, required to carry on some activities of the-nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art. 12." (1) [1962] Supp. 2 S.C.R. 989 at 1002. (2) [1967] (3) SCR 377 at 385. 223

Hence, to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulate tests of ,"industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon"

Far from advocating an expansive sovereign carve-out, Beg CJ endorsed the result in BWS and expressly cautioned against any expansion of governmental immunities that would undermine the protective purpose of the Act. The separate opinions in BWS differ on nuance, not on the core proposition that welfare, developmental and service activities of the State are not sovereign. The 2005 reference's reading of the concurring opinions is, with respect, unsustainable on a fair reading of the text.

35. The Report of the National Commission on Labour, Volume I, prepared by the Ministry of Labour in 2002, in Paras 6.38 & 6.39, proposed that every establishment with more than 20 workers would be considered an industry. This lends support to the above submissions that the expansive definition of industry is not an aberration or something out of the ordinary. Rather, Krishna Iyer J.'s formulation is a tempered one, balancing and protecting workers' rights.

B.2 The Illustrative Examples in the 2025 IR Code Demonstrate That Sovereign Functions Relate to Core State Activities

36. The IR Code excludes from the definition of *"industry"* in Sec. 2(p):

> *"(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;"*

The illustrative examples, defence research, atomic energy, space, share a distinctive character: they are activities that were exclusive to the State by their very nature, but now have an opening for the private sector, and though they are directly connected to the protection of national security and

territorial integrity; they however would fall outside the purview of sovereign function.

37. They are paradigmatic of what public international law terms *acta jure imperii*, see UN Audiovisual Library of International Law (AVL), "United Nations Convention on Jurisdictional Immunities of States and Their Property" (explanatory note); the exercise of coercive or regulatory authority inherent to statehood that cannot meaningfully be delegated to private actors without compromising the essence of governance itself. By contrast, welfare, service or developmental activities are routinely performed through private agencies, NGOs and public-private partnerships, and cannot share this character.

38. The statutory illustrations perform an important interpretive function. The *noscitur a sociis* and *ejusdem generis* canons of construction require that the general phrase *"relating to sovereign functions"* be understood in light of the specific examples that follow it. Those examples, defence research, atomic energy and space, pre-eminently involved exclusive State power, and carried direct implications for national sovereignty and security. Though now private interests are allowed. The general phrase, as it was intended in 2020 while drafting the Code, must therefore be read as limited to activities of a similar genus:

core, inalienable, non-delegable and exclusively governmental.

B.3 Comparative and International Perspectives on the Sovereign-Function Exemption

39. International and comparative law converge on the view that sovereign-function exemptions from labour regulation must be narrowly confined to core governmental activities.

40. The **ILO Convention No. 87 (Freedom of Association)** permits:

> *"Article 9;1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations."*

restrictions only for the police and armed forces; all other public servants, including those employed in welfare departments, health services and educational establishments, are entitled to full freedom of association. The ILO Committee on Freedom of Association has consistently held that restricting collective labour rights on the basis of a broadly-conceived *"sovereign function"* exception violates international labour standards.

41. English administrative law distinguishes between governmental and non-governmental functions on the basis of whether the activity is one that the State alone can

perform by virtue of its legal monopoly of compulsory power see H.W.R. Wade & C.F. Forsyth, Wade & Forsyth's Administrative Law (Oxford University Press). **Tamlin v. Hannaford [1950] 1 KB 18** held that:

> "*It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government.…*
>
> *When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947, which was passed on the very same day as the Transport Act, 1947. In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a government department.*"

Crown immunities generally do not extend to separate statutory corporations carrying on service/commercial activities unless they are truly Crown agents.

However, a caveat, judgments of the UK cannot be automatically transported to Indian jurisprudence, and the

state is not immune from the application of laws and accountability in the matter of labour laws. This difference goes to the core of Jagannath Maruti Kondhare Case, where it was held that the:

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

The sovereignty in India, lies with the people.

42. The US doctrine of Tenth Amendment/state sovereign regulatory immunity limits in the Commerce Clause context, refined in ***Garcia v. San Antonio Metropolitan Transit Authority*****, 469 US 528 (1985)** held:

> *"We therefore now reject, as unsound in principle and unworkable in practice, a rule of state immunity from federal regulation that turns on a judicial appraisal of whether a particular governmental function is "integral"*

or "traditional." Any such rule leads to inconsistent results at the same time that it disserves principles of democratic self-governance, and it breeds inconsistency precisely because it is divorced from those principles. If there are to be limits on the Federal Government's power to interfere with state functions - as undoubtedly there are - we must look elsewhere to find them."

Moved away from the idea of identifying *"traditional governmental functions"* that could be immunised from federal regulation, precisely because that concept proved unworkably broad. The Supreme Court held that the running of a mass transit authority, a service function, could not be treated as an immune governmental function. The US experience illustrates the practical danger of allowing the sovereign-function concept to expand beyond core exercises of governmental power: once it is extended to welfare or service activities, there is no principled stopping point.

43. These comparative perspectives demonstrate that the narrow conception of sovereign functions adopted in BWS and the Jagannath Maruti Kondhare Case is consistent with international norms and comparative constitutional principles. A broader reading would place India out of step with prevailing global standards.

B.4 Consequences of a Broad Sovereign-Function Exemption

44. A principled approach to the sovereign-function exemption requires that this Court consider not only the textual and historical arguments but also the structural consequences of the competing interpretations. The respondent submits that a broad exemption, one that extends to all activities a government department happens to perform, would be constitutionally untenable, practically unworkable and normatively indefensible, for the following reasons.

45. Labour legislation is a mechanism through which the State holds employers accountable for the welfare of workers. When a government department is shielded from that accountability by an over-broad sovereign-function exemption, it operates as a law unto itself: it can hire, discipline and dismiss workers without the procedural safeguards that private-sector employers must observe. In the republican framework established by the Constitution, where sovereignty resides with the people, the State cannot claim privileges that place it above the very laws enacted to ensure industrial harmony.

46. The concept of sovereign functions has historically served to identify activities in which the exercise of State power is inseparable from the performance of the function:

the power to legislate cannot be delegated to a private party; the power to maintain public order cannot be contracted out; the power to conduct the nation's foreign affairs is an attribute of statehood that no private agent can exercise in the State's name. The sovereign-function doctrine, properly understood, operates as a description of what the State *must* do rather than what it *may choose* to do. Welfare activities, by contrast, are activities the State may choose to perform or leave to the private sector.

47. A broad sovereign-function exemption creates a powerful incentive for the State to expand its involvement in activities that could equally be performed by the private sector, so as to insulate those activities from labour regulation. This distorts the allocation of economic activity between the public and private sectors: the State gains a competitive advantage not on grounds of efficiency or public interest, but by evading statutory obligations. In the era of economic liberalisation and public-private partnerships, classifying service delivery or developmental activities as sovereign would artificially advantage State involvement over private provision and discourage efficiency reforms, contradicting the mixed economy envisaged by the Constitution.

48. Workers performing identical functions in physically adjacent establishments, one government-owned, the other

private, would enjoy entirely different levels of legal protection if the sovereign-function exemption were interpreted broadly. A sweeper employed by a private cleaning contractor at a government office would be protected by the ID Act; a sweeper employed directly by the government department would not. This differentiation cannot be justified on any principled basis and may amount to a violation of Articles 14 and 16 of the Constitution, which guarantee equality before the law and equal treatment in matters of public employment. The triple test, by focusing on the nature of the activity rather than the identity of the employer, provides an equality-respecting and constitutionally sound framework.

49. Parliament has enacted the ID Act and now the IR Code for the express purpose of protecting workers. A broad judicial interpretation of the sovereign-function exemption would, in effect, create an enormous exception to parliamentary intention that Parliament itself has not chosen to enact. It is axiomatic that exceptions to beneficial legislation should not be construed so widely as to defeat the main purpose of the enactment: The IR Code's narrow list of illustrative exclusions, defence research, atomic energy and space, reflects Parliament's own judgment about the appropriate scope of the exemption. Expanding it beyond that list would be a usurpation of the legislative function.

50. An elastic sovereign-function test invites endless litigation as every government department characterises its activities as *"sovereign"* in order to avoid labour obligations. A narrow test, one tied to the inalienable, primary functions of the State, reduces the scope for such divergence and provides a clear and administrable criterion that lower courts and tribunals can apply consistently.

51. The narrow conception of sovereign functions is not confined to industrial disputes law; it pervades Indian public law as a whole, and this cross-domain uniformity is itself a reason to affirm it. In ***Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1**, a three-Judge Bench of this Court held, in the context of arbitrability, that:

> "*Sovereign functions of the State being inalienable and non- delegable are non-arbitrable as the State alone has the exclusive right and duty to perform such functions. For example, it is generally accepted that monopoly rights can only be granted by the State.*"

The adjectives chosen by this Court are instructive: the hallmarks of a sovereign function are that it is both inalienable and non-delegable. An activity that can in principle be delegated to a private party, even if the State chooses to perform it directly, is not sovereign in this sense.

52. In sum, a broad sovereign-function exemption would produce a State that is unaccountable to its workers. It is respectfully submits that this Court should reaffirm the constitutional and labour-protective vision that has guided Indian industrial jurisprudence for nearly five decades.

Settled By:

Ms. Indira Jaisingh,
Senior Advocate

Mr. Bharat Sangal,
Senior Advocate

Dated: 27.02.2026

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4569 /2002

IN THE MATTER OF:

STATE OF GUJRAT — APPELLANT

VERSUS

MEENA BEN JETTY — RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE PETITIONER
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

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IN THE MATTER OF:

STATE OF GUJRAT — APPELLANT

VERSUS

MEENA BEN JETTY — RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPODENT

The petitioner has challenged the order dated 18-9-2000 passed by Hon'ble Division bench of Gujarat High court upholding the order passed by the Ld. Single Judge on 24-04-2019 thereby upholding the award passed by the labour court on 26-08-1996 directing reinstatement along with back wages along with 18% interest.

Date	Event
1987	The respondent was employed in the forest department of the State of Gujarat on the post of typist-cum-clerk on a daily wage basis.
1990	The respondent filed civil suit No. 612/1990 for declaration and permanent injunction restraining forest department from disturbing the service.
13-02-1991	The civil suit was dismissed on the ground of jurisdiction.
1991	Reference filed by respondent before labour court.
26-08-1996	The claim of the respondent was partly allowed, the Labour Court. Granted reinstatement alongwith backwages and along with 18% interest on the arrears.
23-05-1998	Special Civil application filed by petitioner/Appellant u/s A 227 COI against order of labour court.
20-04-1999	The petition u/s A227 COI was filed and dismissed on grounds of unexplained delay.
27-03-2000	L.P.A. filed with application for condonation of delay.
18-09-2000	Division bench disposed the LPA and upheld the order of labour court.
17-09-2001	SLP against order dated 18-09-2000 passed by High court

	was filed.
08-03-2002	Counter affidavit was filed by the respondent.
05-08-2002	Leave was granted with interim stay on payment of back wages.
14-12-2004	Tagged with state of U.P. Vs. Jai Bir Singh
31-05-2021	The respondent reached the age of superannuation.
21-09-2022	The Hon'ble Court allowed the I.A. No. 118966 of 2022 and directed that the respondent shall be paid back wages in pursuance of award of labour court and all her rental dues and all consequential benefits within two months of this order.

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for welfare of public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given to the definition of INDUSTRY considering the welfare and benefit of the employees and to prevent their exploitation. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organization.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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 defense research, atomic energy and space; or (iii) any domestic service; or (iv) any other activity as may be notified by the Central Government

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

In 1970, in the case of **Management of Safdarjung Hospital v/s. Kuldip Singh Sethi,** . In this case, the issue arises "whether a firm of solicitors constitutes an industry?". And it was held that the essential basis of industrial disputes is that the dispute must arise between capitalist and labour in enterprises was capitalist and labour combine to produce commodities or provide service.

It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his

employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

Case of Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.

1. In 1978, in the Landmark case of Bangalore Water Supply and Sewerage Board v. A. Rajappa The the constitution bench has given liberal interpretation to the word industry and held that hospitals, clubs, and educational institutions, research and charitable institutions as industries and this was ruled out in the ratio of 3:2 of Hon'ble judges.

   It overruled its earlier decisions given in the cases of Safdarjung Hospital vs. K.S sethi AIR 1970 SC 1407. National Union of commercial Employees vs. M.R Meher AIR 1962 SC 1080, University of Delhi v. Ram Nath AIR 1963 SC 1873.

   Madras Gymkhana club employees vs. Management of Gymkhana club AIR 1968 SC 554. and cricket club of India vs. Bombay Labour Union AIR 1969 SC 276.

III. **Brief Background and history of legal development of the definition of history by Hon'ble Supreme court through judicial pronouncements.**

Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, 1958 SCC Online SC 4

1. The majority, led by Justice S.K. Das, interpreted the definition of "industrial dispute." The term "any person" in the definition was deemed not to encompass all individuals but those with a direct or substantial interest related to employment, non-employment, terms, or conditions of labor. The Court rejected a broad interpretation.

2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as

industrial disputes, contingent on workmen's interest.

3. The majority decision dismissed the appeal, stating that Dr. Banerjee was not a 'workman,' and the dispute did not qualify as an industrial dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay,

1949 SCC Online FC 12

1. That a dispute in regard to the reinstatement of a dismissed employee is a dispute "connected with the employment or non-employment of a person" and is therefore an "industrial dispute" within the meaning of s. 2, cl. (k), of the Industrial Disputes Act, 1947.

2. that the definition of the term "employer" in s. 2, cl. (g), of the said Act is not exhaustive or inclusive and does not limit the application of the Act to undertakings carried on by the Central or Provincial Government or a local authority. The Act applies also to industries carried on by private individuals and associations.

D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619

1. The Act defines "industry" and "industrial dispute" as any business, trade, undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

2. The meaning of "industry" and "industrial dispute" in a modern society, where disputes were not isolated but rather a result of a continuous process of social evolution. It emphasizes the need for legislation to address the significant problems that arise in the industrial field, ensuring that society remains adaptable and responsive to changing circumstances.

State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC Online SC 44

1. In this case respondents 2 and 3, who were ward servants at J. J. Group Of Hospital in Bombay under state control, were retrenched without compensation, violating S. 25F(b) of the Industrial Disputes Act, 1947. They sought a writ of mandamus from the High Court, but the single judge dismissed it, stating that non-payment of compensation didn't invalidate retrenchment as S. 25I provided a remedy for recovery.

2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

3. This Hon'ble court held that the doctrine of quid pro quo (profit motive) wasn't crucial in determining whether an activity qualifies as an industry.

Corpn. of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45

1. The question was whether the municipal activities of the Corporation of Nagpur City fell within the definition of 'industry' as per the C.P. and Berar Industrial Disputes Settlement Act, 1947. Disputes arose between the Corporation and its employees, and the State Government referred them to the State Industrial Court. The Industrial Court ruled that the Corporation and most of its departments were covered by the definition of 'industry.The High Court rejected the contention.

2. The supreme court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only activities analogous to trade or business could be industries. It affirmed that if a service rendered by a corporation

qualified as an industry, the employees of the departments connected with that service were entitled to the benefits of the Act.

3. The court also ruled that if a municipal department discharged multiple functions, some falling within and some outside the definition of industry, the predominant functions of the department would be the criterion for the purposes of the Act.

University of Delhi v. Ram Nath, 1963 SCC Online SC 117

1. The University of Delhi and Miranda House (a college affiliated with the University) were found not to constitute an "industry" under the Industrial Disputes Act, 1947.

2. The Tribunal rejected the appellants' contention and awarded retrenchment compensation to the respondents

3. The Supreme Court held that the work of education, especially in institutions like the University of Delhi, is primarily carried out with the assistance of teachers. Considering the exclusion of the whole class of teachers from the definition in Section 2(s), the court concluded that it could not have been the policy of the Act to treat education as an industry, particularly for the benefit of a minor and insignificant number of subordinate staff.

Cricket Club of India Ltd. v. Bombay Labour Union, (1969) 1 SCR 600.

1. The court pointed out that the income earned by the club, such as rents from immovable properties, was not attributable to the aid and cooperation of employees. The facilities provided, including residential accommodation and catering were primarily for the club members and not in the nature of running a hotel or systematic business for profit.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an 'industry' in that enterprise.

b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggested that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Devai P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and crafts.

IV. Analysis of Industry by the Hon'ble Supreme court through various judicial pronouncements holds following not to be industry

i. 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.

ii. educational, scientific, research or training institutions; or

iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

iv. khadi or village industries; or hospitals or dispensaries

v. 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

vi. Any domestic service; or

vii. 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

viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide

order dated 05-05-2005.

The three judges bench vide order dated 31-1-2002 , in the matter of state of up versus Jaibir Singh referred the matter regarding the question of interpretation of industry to the larger bench.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt it is a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act ,the issue of industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Petition Filed by the Petitioner and interpret the definition of industry accordingly in the interest of workmen.

FILED BY NIDHI,
LEGAL SERVICE COUNSEL-CUM-CONSULTANT,
COUNSEL FOR RESPONDENT No. 2
AOR (CODE-1379)

231

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5101 of 2002

IN THE MATTER OF:

THE CHIEF CONSERVATOR ..APPELLANT

VERSUS

MARIGOWDA ..RESPONDENT

TAGGED WITH THE MATTER OF:

STATE OF UTTAR PRADESH …APPELLANT

VERSUS

JAI BIR SINGH …RESPONDENT

WRITTEN SUBMISSIONS OF MR. SHIVAM SINGH APPEARING ON BEHALF OF RESPONDENT

PAPERBOOK

[Kindly see inside for index]

ADVOCATE ON RECORD FOR THE RESPONDENT: MR. EC VIDYASAGAR

[AOR CODE: 1105]

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-I

WRITTEN SUBMISSIONS OF THE RESPONDENTS

INDEX

Note: Estimated time of arguments- 25 minutes

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

State of Uttar Pradesh & Others ……Petitioners

Versus

Jai Bir Singh & Others. ……Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

1. The present reference to this Hon'ble Nine-Judge Bench concerns the interpretation of the expression "industry" under Section 2(j) of the Industrial Disputes Act, 1947 ("**1947 Act**") and the continued correctness of the decision in **Bangalore Water Supply and Sewerage Board v. A. Rajappa**[1] ("**BWSSB**"). By its order dated 16.02.2026, this Hon'ble Court has framed questions relating to the scope of the test laid down in *BWSSB*, the impact of the Industrial Disputes (Amendment) Act, 1982, ("**1982 Amendment Act**") and the Industrial Relations Code, 2020 ("**2020 Code**"), the status of social welfare and governmental activities, and the meaning of "sovereign function." The following submissions respectfully address the said issues in the sequence indicated in the reference order.

Test laid down in *BWSSB*

2. In *BWSSB*, a seven-Judge Bench of this Hon'ble Court undertook an exhaustive examination of Section 2(j) of the 1947 Act, and laid down what has come to be known as the "triple test" for determining whether an activity constitutes an "industry." The Court held that an establishment would fall within the definition of "industry" if there exists:

[1] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.

a. a systematic activity;

b. organized cooperation between employer and employee; and

c. production and/or distribution of goods or services calculated to satisfy human wants or wishes.

3. The Bench clarified that the presence of profit motive is immaterial, that charitable or governmental character does not *per se* exclude an undertaking, and that only strictly understood "sovereign functions" of the State stand outside the ambit of Section 2(j). Emphasis was placed on the nature of the activity and the employer-employee relationship, rather than on the identity or motive of the employer.

SUBMISSIONS ON THE ISSUES REFERRED BY THIS HON'BLE COURT

ISSUE 1

4. It is submitted that the interpretation adopted in *BWSSB* is a correct construction of Section 2(j) of the 1947 Act, and does not warrant reconsideration.

5. That Section 2(j) of the 1947 Act defines "industry" in language of considerable amplitude. The provision does not condition its applicability upon the existence of profit motive, nor does it draw any distinction based on the institutional character of the employer or its public or private status. The statutory emphasis is upon the existence of an undertaking and organized activity through employer-employee cooperation.

6. It is submitted that the test articulated in paragraphs 140 to 144 of the opinion of Hon'ble Mr. Justice V.R. Krishna Iyer in *BWSSB* correctly states the law. The formulation requiring systematic activity, organized cooperation between employer and employee, and the production or distribution of goods or services for the satisfaction of human wants does not enlarge the statutory definition but elucidates its constituent elements. The test is firmly rooted in the text and structure of Section 2(j) and represents a principled exposition of the provision consistent with the scheme and object of the Act.

7. That the absence of profit motive or gainful objective is therefore irrelevant. What is determinative is the existence of organized, remunerative activity structured through an employment relationship, irrespective of whether the employer is commercial, charitable, or governmental in character.

8. That, with respect, the reliance placed in the referral order on **Management of Safdarjung Hospital v. Kuldip Singh Sethi**[2] ("**Safdarjung Hospital**") requires reconsideration. The reasoning proceeded upon comparative reliance on an early Australian statute without due notice of its subsequent amendment, which had adopted an expansive definition broadly comparable to Section 2(j). The Constitution Bench in *BWSSB* restored primacy to the Indian statutory text. Accordingly, *Safdarjung Hospital* cannot displace the authoritative exposition in *BWSSB*.

9. The functional approach in *BWSSB* ensures that workmen engaged in systematic and organized activity are not left in a "rightless zone." Excluding undertakings solely based on institutional character or professed objective risks denying statutory protection, contrary to Article 21. Section 2(j) employs "means and includes," signifying expansive legislative intent; a restrictive construction would render expressions such as "service," "employment," and "calling" otiose.

10. That judgments prior to *BWSSB* on the meaning of 'industry' (for instance, **DN Banerji v. PR Mukherjee**[3]**; The Corporation of the City of Nagpur v. Its Employees;** [4] **State of Bombay v. The Hospital Mazdoor Sabha;**[5] **University of Delhi v. Ram Nath;** [6] **The National Union of Commercial Employees v. M.R. Meher;**[7] **Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club**[8] have time and again considered four aspects, with varying conclusions. The four aspects are:

[2] Management of Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735.
[3] DN Banerji v. PR Mukherjee, 1953 SCR 302
[4] The Corporation of the City of Nagpur v. Its Employees, (1960) 2 SCR 942.
[5] State of Bombay v. The Hospital Mazdoor Sabha, (1960) 2 SCR 866.
[6] University of Delhi v. Ram Nath, (1964) 2 SCR 703.
[7] The National Union of Commercial Employees v. M.R. Meher, 1962 AIR 1080.
[8] Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, (1968) 1

a. The identity or status of the party undertaking the activity, i.e., whether the employer is a state actor or a private person;

b. The motive of the employer in undertaking the activity, i.e., whether the activity is geared towards charity or service, or is aimed at earning profits;

c. The nature of the activity, i.e., whether it is comparable to trade or business; and

d. The relationship between the employer and employee.

11. While some judgments treated identity or motive as dispositive, *BWSSB* held that the nature of the activity and relationship between employer and employee are determinative.

12. That both the identity and the motive of the employer in undertaking the activity are incorrect metrics and ought not to be relied on for the following reasons:

a. The economic relationship between employer and employee is consequential; motive is irrelevant. For instance, a company under Section 8 of the Companies Act, 2013, and a for-profit company are identical insofar as janitorial staff are concerned. Assessing only the employer's motive risks treating employees as volunteers.

b. Even if this Hon'ble Court considers the motive of a party to be an appropriate test by which to judge whether an activity is an industry, it is submitted that:

i. Preceding cases which stand overruled by *BWSSB* consider the motive of the employer alone. For instance, in **Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club**,[9], Hidayatulla, J. observed that the existence of the industry must be "*viewed from the angle of what the employer is doing*." It is respectfully submitted that this approach does not withstand scrutiny. The motive of all parties must be considered and not the motive of the employer alone.

SCR 742).

[9] (1968) 1 SCR 742

In other words, the motive of the employee, as important as the motive of the employer. The intention of the employer may be to impart knowledge or spirituality or to do charity, but the intention of the employee (who is, say, a cleaner or a gardener) is to earn a living, i.e., to make a profit from their labour. No rationale justifies considering one party's intention to the exclusion of the others. If either of the parties is motivated by an economic rationale, the test is fulfilled, and the activity would be capable of being considered an industry;

ii. In fact, Section 2(j) of the 1947 Act itself envisages the perspectives of both parties. The first half of the definition of 'industry' concerns employers and the second half concerns workmen. Neither is subject to the other;

iii. Assessing the motive of the provider of services would automatically exclude purely charitable undertakings where all actors are geared towards achieving a common end and nothing more. An employer-employee relationship would never arise. For instance, thousands to lakhs of people volunteer their time and effort towards enterprises such as PETA (People for the Ethical Treatment of Animals), the Art of Living, ISCKON, etc. They do so without the incentive of a monetary or other material consideration. If the motive of such volunteers is assessed, there is no danger of a purely charitable or religious or spiritual undertaking being considered an industry.

13. That educational and research institutions as well as hospitals cannot *ipso facto* stand excluded from the purview of 'industry'. Even if the motive of the employer alone is assessed, it is trite to state that educational and research institutions as well as hospitals are operated by many with the aim of reaping profits. This fact has received judicial recognition (see, for instance **Union of India v. Moolchand Kharaiti Ram Trust; [10] Social Jurists v. State (NCT of Delhi);[11] New Noble**

[10] Union of India v. Moolchand Kharaiti Ram Trust, (2018) 8 SCC 321.
[11] Social Jurists v. State (NCT of Delhi), 2007 SCC OnLine Del 473.

Educational Society v. CIT.[12] Further, the very same activity can be a social service while also making a significant profit. These facets of an activity are not always mutually exclusive. Assessing the 'dominant purpose' or 'predominant object' may not, therefore, always result in an accurate picture of the nature of the activity vis a vis those seeking protection under the 1947 Act. In any event, even those educational / research institutions and hospitals which are operated with the exclusive aim of social service could, depending on the nature of their operations, be an industry under section 2(j) of the 1947 Act, much like any other charity.

14. That, in relation to professions, this Hon'ble Court in **The National Union of Commercial Employees v. M.R. Meher**,[13] held that the "*cooperation between capital and labour or between the employer and his employees must be direct and must be essential*" and that such cooperation must be "*essential for carrying out the purpose of the enterprise*" in order for a profession to be considered an industry. It is submitted that examining whether a particular act of cooperation is "essential" is an inherently arbitrary endeavour. All activities which professionals require for their functioning are arguably essential to it. The COVID-19 pandemic resulted in those who were previously considered "unskilled" workers being considered "essential" workers, bringing to the fore the significance of their work. These workers were largely from the informal sphere. Across sectors, cleaners or sanitation workers, transportation workers, warehouse workers, clerks and staff in shops and stores were variously considered frontline or essential. However, the test articulated in *MR Meher* would likely consider these very workers to be inessential for the purpose of the enterprise in which they are engaged. Therefore, this Hon'ble Court's metric in the aforesaid case does not permit courts to accurately evaluate whether an activity is an industry because of the arbitrariness inherent in answering the question, "What is essential?".

15. That on the second limb, the 1982 Amendment Act introduced a narrowed and exclusion-based definition; however, the amendment was not brought into force.

[12] New Noble Educational Society v. CIT, (2023) 6 SCC 649.
[13] 1962 AIR 1080.

The governing definition under the 1947 Act therefore remains the unamended provision as interpreted in *BWSSB*. The 2020 Code adopts a restructured formulation and introduces exclusions, including activities relatable to sovereign functions. While this reflects a legislative policy choice in a new statutory regime, it does not alter the position under the 1947 Act. The correctness of *BWSSB* must be assessed on the text and scheme of Section 2(j) as it stands. The broader and more functional approach under the 1947 Act accords with the statutory language and preserves uniform protection for workmen engaged in organized employment.

16. That 1982 Amendment Act was never notified and therefore never altered the statutory framework. As the Union of India submitted in its short note dated 24.11.2016 filed before this Hon'ble Court, the reason for its decision not to notify the amendment is that "*no alternate dispute resolution machinery for excluded category of workers is in place*". This reflects the Union of India's own understanding that a number of classes of workers would be excluded from the beneficial provisions of the ID Act, should the amendment be notified. The argument advanced by some parties that the executive does not have the authority to postpone notifying an amendment holds no water. Parliament itself enacted the 1982 Amendment Act which provides that it shall come into force on such date as the Central Government may appoint. Not having come into force, it can have no effect on the interpretation of the ID Act. Similarly, the argument that amendments can operate retrospectively even if such retrospectivity is not expressly provided for is premature because the question of prospective or retrospective application can only arise if the amendment comes into force. The apprehension expressed in the referral order in this case, that the legislature and the executive are inhibited and are facing difficulties in bringing the new law into force is evidently unfounded. The fact that Parliament enacted the 2020 Code in 2020 and the executive notified it in 2025 indicates that no such inhibition or difficulty was faced.

17. That reliance upon subsequent legislative developments to interpret an earlier statute must also be approached with caution. In **Thiru Manickam and Co. v. State**

of Tamil Nadu,[14] this Hon'ble Court recognized that later legislation may sometimes furnish interpretative guidance, but only where it is clarificatory in nature. The 2020 Code introduces large-scale structural and policy changes and cannot be treated as clarificatory of Section 2(j) of the 1947 Act.

ISSUE 2

18. It is respectfully submitted that social welfare activities, schemes, and enterprises undertaken by Government Departments, or their instrumentalities can constitute "industrial activities" within the meaning of Section 2(j) of the 1947 Act, provided they satisfy the functional test laid down in *BWSSB*.

19. That *Section 2(j)* defines "industry" in terms of wide amplitude, it states 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. The breadth of this language admits of no distinction based merely on the public or governmental character of the employer.

20. That social welfare schemes and governmental programs today operate through structured departments employing large numbers of workers in organized and remunerative capacities. Where such activities exhibit a clear employer-employee nexus and systematic service delivery, they cannot be excluded solely because they are undertaken in furtherance of public welfare. The nature of the work performed, and the existence of organized cooperation, define the industrial character of the activity and not the motive of the State.

21. That significantly, Section 2(j) does not carve out any exception in respect of "sovereign functions." The statute neither defines the term nor expressly excludes such activities from its ambit. In the absence of a legislative exclusion, it would not be appropriate to read into the provision a limitation that Parliament has not enacted. Even in *BWSSB*, the exclusion of sovereign functions was understood in a narrow sense, confined to core constitutional functions such as legislation, administration

[14] (1977) 1 SCC 199.

of justice, defence, and maintenance of law and order. Welfare and developmental activities cannot be equated with such primary sovereign functions.

ISSUE 3

22. Most recently, in Article 370 of the Constitution, In re,[15] a five-Judge Bench of Hon'ble Court held that external sovereignty means the independence of a nation vis a vis other nation whereas internal sovereignty includes law-making power by a body which is not subordinate to any other body.[16] The expression "sovereign function" ought to be understood in view of this observation.

23. It is submitted that the expression "sovereign function" must be construed narrowly. The mere fact that the employer is the Government does not render every governmental activity, sovereign. Sovereign functions are confined to core, inalienable State functions which cannot be performed by private persons, such as legislation, administration of justice, defense, and maintenance of law and order. The determinative factor is the nature of the activity, not the identity of the employer.

24. Activities such as social forestry, irrigation, public works, municipal services, environmental protection, hospitals, and educational institutions are alienable in nature. Their performance by the State does not alter their essential character. Where such activities are carried on through systematic employer-employee cooperation, they fall squarely within the ambit of Section 2(j) of the 1947 Act.

25. Even within departments performing sovereign functions, support staff such as drivers, gardeners, clerical staff, and technicians do not exercise sovereign power merely by virtue of their employment. Their status under Section 2(s) must be determined by the nature of work performed. A counter argument may be that notwithstanding the nature of work, the larger sphere in which such workers operate (i.e., the sovereign sphere) cannot afford any pauses or delays or to be flexible as they assert their rights. Such an argument is founded entirely on the essentiality and

[15] (2024) 11 SCC 1
[16] Paras 89 – 91

importance of workers even in the absence of a so-called 'direct' cooperation between the employer and the employee. It cannot, on one hand, be argued that such workers are not essential or directly related to an enterprise and therefore ought to be excluded from the definition of "industry" even as it is argued that the very same category of workers is indispensable in the discharge of sovereign functions. Such an approach is inherently contradictory, and lays bare the difficulties with departing from *BWSSB*.

26. Constitutional duties, such as environmental protection under Article 48A, do not render workers immune from statutory labor protection. An expansive interpretation of "sovereign function" would deprive public employees of industrial adjudication and conflict with Articles 14, 21, and 43.

27. Nothing in the language of Section 2(j) suggests that sovereign functions are excluded. The provision is wide and inclusive, focusing on organized employer-employee activity. All activities that satisfy the statutory test constitute "industry," irrespective of the employer's identity. The plain language of section 2(j) as well as the other provisions do not brook an interpretation that "sovereign functions" are excluded from its purview. It is settled law that the plain language of a statute must be given effect to as it is the expressed intention of the legislature.[17] In fact, the term "sovereign functions" finds no mention in the ID Act. Excluding sovereign functions from section 2(j) would therefore amount to rewriting the statute. This Hon'ble Court ought not to add to the words of the statute.[18]

Drafted by: Harpreet Singh Gupta, Spoorthi Cotha, Subhash Chandra Sagar and Vinayak Mohan

Estimated time of arguments: 25 minutes

[17] Rananjaya Singh v Baijnath Singh, AIR 1954 SC 749.
[18] British India General Insurance Co Ltd v. Captain Itbar Singh, AIR 1959 SC 1331.

HON'BLE ... N. SANTOSH HEGDE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 20982 OF 2002.

IN THE MATTER OF:

The Workmen represented through the Secretary Anusandhan & Firm Mazdoor Union, Hazaribagh ....Petitioner

Versus

Central Rainfed Upland Rice Research Station, Hazaribagh ....Respondent

SYNOPSIS BY PETITIONER PURSUANT TO ORDERS DATED 27.7.2004 AND 4.10.2002 OF THIS HON'BLE COURT.

New Delhi
Date: 6 .10.2004

(Shashi B. Upadhyay)
Advocate for the Petitioner:

HON'BLE ... N. SANTOSH HEGDE

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SYNOPSIS BY PETITIONER PURSUANT TO ORDERS DATED 27.7.2004 AND 4.10.2002 OF THIS HON'BLE COURT.

Most Respectfully Showeth:

A. Brief Relevant Facts:

i) The respondent Central Rainfed Upland Rice Research Station, Hazaribagh is a branch of Central Rice Research Institute under the Administrative Control of Indian Council of Agricultural Research. The Institute is engaged in research work with regard to production of rice. It has its own plantation wherein by applying labour, it produces seeds of high yielding variety rice for distribution among farmers, etc.

through the Department of Agriculture, Government of Bihar. The concerned workmen have been performing different nature of permanent works since 1980 as labourers, chowkidars, tractor drivers, helpers in tractors, cultivators, sowing, etc. Apart from cultivating rice, the respondent-Institute also cultivates and sells in the open market coarse paddy, fine paddy, mixture paddy, paddy straw, Bengal gram, wheat, arhar, lentil and pulses, sweet potatoes and onions, etc.

ii) The industrial dispute was raised regarding regularization of the workmen who were continuously working for the said institute for several years. The Ministry of Labour, Government of India, referred the dispute to the Central Government Industrial Tribunal No.2 at Dhanbad by order dated 25th July, 1990 on the issue as to:

> "Whether the action of the management of Central Rainfed Upland Rice Research Station, Hazaribagh in not regularizing Smt.Panwa Devi and 80 other workmen, as mentioned in Annexure I and also not making payment of proper wages and other benefits to them is justified? If not to what relief the workmen concerned are entitled?"

iii) The first question that was taken up for consideration by the Industrial Tribunal was as to whether the respondent Research Institute is an "industry" within the meaning of Section 2(j) of the Industrial Dispute Act, 1947. Relying upon the decision of this Hon'ble Court in **Bangalore Water Supply Cases**[1978 (2) SCC 213], the Industrial Tribunal returned a finding that the Respondent Research Institute is indeed an "industry" vide paras 11, 12, 13, 31, 32, 33 and 34 of Annexure P-3.

iv) Subsequently the Industrial Tribunal made an Award dated 26.6.1995 that the action of the management of the Respondent Institute in not regularizing the concerned workmen and not making payment of proper wages and other benefits to them was not justified and accordingly the management was directed to form a committee constituting of three senior officers inclusive of one scientist to prepare a list of persons required permanently throughout the year and to give them a regular scale. The committee was also directed to prepare a list and make a panel of the permanent workmen for regularization and absorbing them in future vacancies subject to the conditions that they would be taken as casual labourers in the said Institute as and when it would be required till their regularization as permanent employees. It was also directed

that in the meantime no other outsider workmen would be employed for the work of casual labourer in the Institute.

v) Since despite a categoric finding that the concerned 81 workmen were doing the job of permanent nature and were entitled for the relief of regularization, the Industrial Tribunal did not direct the regularization and referred the matter to a Committee, the petitioner field CWJC No.3137 of 1996 (R) before the then Ranchi Bench of Patna High Court. The High Court by order dated 20.1.1998 set aside the implementation portion of the Award and referred the matter back to the Industrial Tribunal for passing final order as asked for in the Reference vide Annexure P-4.

vi) The Industrial Tribunal thereafter passed final Award/order dated 12.7.1999 directing the Management to regularize the services of all the concerned workmen and to pay them the arrears of wages from 1990 till date as admissible within a period of three months from the date of the publication of the Award.

vii) The said Award was challenged by the respondent Management in CWJC No.3384 of 1999 (R) in the then Ranchi Bench of Patna High Court on the ground that the respondent Management was not an "industry" under Section 2(j) of the Industrial Dispute Act, 1947. The High Court by order dated

29.11.2001, on the basis of the decision in **Physical Research Laboratory vs. KJ Sharma** [1997 (4) SCC 257 – para 12) held that the Respondent Institute is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and thus Reference was not maintainable. The Award was thus set aside. The petitioner carried the matter to the Division Bench in LPA No.93 of 2002. The Division Bench considered the single issue as to whether respondent Central Rainfed Upland Rice Research Station, Hazaribagh is an "industry" or not within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The learned Division Bench upheld that like Physical Research Laboratory, the respondent is also engaged in research activity and applying the ratio of the decision of this Hon'ble Court in the aforesaid **Physical Research Laboratory vs. KJ Sharma**[1997(4) SCC 257] held that the respondent Institute is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The present petition under Article 136 of the Constitution of India arises from the said judgment of the High Court on the issue as to whether the respondent is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

B. <u>Points Arising for decision</u>:

The only point that arises for consideration in the present petition is as to:

"Whether the respondent Central Rainfed Upland Rice Research Station, Hazaribagh which is a branch of Central Rice Research Institute under the administrative control of Indian Council of Agricultural Research engaged in research work for producing high yielding variety of paddy seeds and other crops both for research and commercial sale applying the labour, falls within the meaning of "industry" under Section 2(j) of the Industrial Disputes Act?"

C. Pleas Sought to be Raised:

i) The respondent is engaged in a systemic activity organized by cooperation between employer and employee for the production and/or distribution of goods and services calculated to satisfy human wants and wishes on a large scale basis and is thus an industry.

ii) The decision of this Hon'ble Court in **Physical Research Laboratory case** [1997 (4) SCC 257] is clearly distinguishable from the instant case. In the Physical Research Laboratory's case, the PRL was a public trust established by Dr.Vikram Sarabhai for research and space and allied sciences financed mainly by the Central Government by making provision in that behalf in the Union Budget. It was virtually an Institute falling

under the Government of India, Department of Space. Its object was to conduct advance research in Astronomy and Astrophysics, Planetary atmosphere and aeronomy, Earth sciences and solar system studies and theoretical physics. It was not directly or indirectly carrying on any trade or business as its activities did not result in production or distribution of goods or services calculated to satisfy human wants and wishes. The knowledge acquired through the research was utilised for the benefit of the Government.

iii) In the instant case it is admitted position that the respondent Central Rainfed Upland Rice Research Station, Hazaribagh is engaged in the research for production of high yielding paddy crops. It has its own plantation wherein by applying labour for producing seeds of high yielding variety rice for distribution to farmers, etc. The Institute engages labour for such purposes and apart from the rice it also grows other crops, namely, coarse paddy, fine paddy, mixture paddy, paddy straw, Bengal gram, wheat, arhar, lentil and pulses, sweet potatoes and onions, etc. which are sold in the open market for commercial gains. The work carried out by the Research Institute are spread all over the year and not seasonal in nature. The continuous engagement of labour for satisfying human wants definitely makes the respondent institute an "industry".

D. List of Authorities Relied in support of Pleas:

i) The petitioner relies upon the Constitution Bench decision of this Hon'ble Court in **Bangalore Water Supply and Sewage Board vs. A. Nachappa** [1978 (2) SCC 213] wherein the Constitution Bench of this Hon'ble Court in para 23 itemised the posers for determination and at para 23(2)(c) it noted:

> "23(2)(c) Would a university or college or school or research institute be called an industry?"

At para 113 while answering the above question, this Hon'ble Court held as under:

> "113. Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientist, para – scientists and other personnel. Is scientific research service? Undoubtedly it is. It 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 service, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. 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 organization, propelled by systematic activity, modeled 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."

ii) **Jaswant Sugar Mills Limited, Merut vs. Badri Prasad & Ors.** [AIR 1967 SC 513 – Para 4].

DRAWN & FILED BY:

(S.B. UPADHYAY)
ADVOCATE FOR THE PETITIONER

NEW DELHI
OCTOBER 6, 2004

254

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 358 of 2003

National Remote Sensing Centre vs. H. Sunder & Ors.

connected with

Civil Appeal No(s) 897 of 2002

State of Uttar Pradesh vs. Jai Bir Singh

INDEX

FILED BY

D Mahesh Babu

Advocate for the Respondents

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 358 of 2003
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Civil Appeal No(s) 897 of 2002
State of Uttar Pradesh vs. Jai Bir Singh

WRITTEN SUBMISSIONS BY VIJAY HANSARIA, SR ADVOCATE
ON BEHALF OF THE RESPONDENTS

Reference Order

1. That this Hon'ble Court vide order dated 16.02.2026 has constituted the present nine Judge Bench to adjudicate on the following issues:
    a. Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by *Hon'ble Mr. Justice V.R. Krishna Iyer* in *Bangalore Water Supply and Sewerage Board's case*[1] to determine if an undertaking or enterprise falls within the definition of "industry" lays down the correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression "industry" as contained in the Principal Act?
    b. Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can

[1] *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213.

be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act?

c. What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the ID Act?

d. Any other issue(s) that may arise during the course of hearing before the nine-Judge Bench.

2. That the correctness of the judgement by the seven Judge Bench in the case of *Bangalore Water Supply* has been doubted by a five Judge Bench of this Hon'ble Court in the case of *State of UP v Jai Bir Singh*[2]. Subsequently another seven Judge Bench of this Hon'ble Court has agreed with the reference order made by the five Hon'ble Judges and referred the present case to a Bench of nine Hon'ble Judges vide order dated 02.01.2017[3].

Ratio of Bangalore Water Supply

3. That this Hon'ble Court in *Bangalore Water Supply* has interpreted the meaning of the expression "industry" defined in section 2(j) of the Industrial Disputes Acts, 1947 which read thus:

> *"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;"*

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[2] *State of UP v Jai Bir Singh* (2005) 5 SCC 1
[3] *State of UP v Jai Bir Singh* (2017) 3 SCC 311

4. The majority judgement delivered by *Hon'ble Mr. Justice Krishna Iyer* on behalf of self, *Hon'ble Mr. Justice PN Bhagwati* and *Hon'ble Mr. Justice DA Desai* interpreted the expression 'industry' in the following terms:

> "140. "Industry', as defined in Section 2(*j*) and explained in *Banerji*[4], has a wide import.
>
> > "(*a*) Where (*i*) systematic activity, (*ii*) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (*iii*) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale *prasad* or food), prima facie, there is an 'industry' in that enterprise.
> >
> > (*b*) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
> >
> > (*c*) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
> >
> > (*d*) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."
>
> 141. Although Section 2(*j*) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.
>
> > "(*a*) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be 'industry' provided *the nature of the activity*, viz. the employer-employee basis, bears

[4] *D.N. Banerji v. P.R. Mukherjee,* (1952) 2 SCC 619.

> resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the *carrying* on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy."

142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

> "(*a*) The consequences are (*i*) professions, (*ii*) clubs, (*iii*) educational institutions, (*iv*) co-operatives, (*v*) research institutes, (*vi*) charitable projects, and (*vii*) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(*j*).
>
> (*b*) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.
>
> (*c*) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free

medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project."

143.The dominant nature test:

"(*a*) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi case*[5] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(*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*) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(*j*).

---

[5] *University of Delhi* v. *Ramlfath*, (1964) 2 SCR 703 : AIR 1963 SC 1873.

(*d*) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

5. *Hon'ble Chief Justice MH Beg* agreed with the opinion delivered by *Hon'ble Mr Justice Krishna Iyer* in the following terms:

> "146. I am in general agreement with the line of thinking adopted and the conclusions reached by my learned Brother Krishna Iyer. I would, however, like to add my reasons for this agreement and to indicate my approach to a problem where relevant legislation leaves so much for determination by the Court as to enable us to perform a function very akin to legislation.
>
> "169. For the reasons given above, **I endorse the opinion and the conclusions of my learned Brother Krishna Iyer**."

6. *Hon'ble Mr. Justice YV Chandrachud on behalf of self, Hon'ble Mr Justice Jaswant Singh and Hon'ble Mr Justice Tulzapurkar*, in the order dated 21.02.1978 expressed their broad agreement with the views expressed by *Hon'ble Mr Justice Krishna Iyer* in the following terms:

> "170. We are in respectful agreement with the view expressed by Krishna Iyer, J. in his critical judgment that the *Bangalore Water Supply* and Sewerage Board appeal should be dismissed. We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned Brother has dwelt."

7. It is submitted that no judgement can be delivered on behalf of the Court after retirement of any member of the Bench. A judgment delivered "on behalf of the Court" is valid only if, on the date of pronouncement, all the judges are lawfully in office and competent to perform judicial functions. After the retirement of *Hon'ble Chief Justice MH Beg* on 21.02.1978, no judgement could have been

delivered thereafter by any other member of the Bench. Thus, it is submitted that the opinions delivered on 07.04.1978 by *Justice Chandrachud* and *Justice Jaswant Singh* are not judgments of the Supreme Court and cannot be looked into.

8. In the alternative, it is submitted that in the opinion *Hon'ble Mr. Justice YV Chandrachud* delivered a reasoned judgement on 07.04.1978 after the retirement of the *Hon'ble Chief Justice MH Beg*, *Justice YV Chandrachud* disagreed with the opinion of *Justice Krishna Iyer* only on exclusion of (a) sovereign functions of the State, (b) charitable services, (c) solicitors' establishment and (d) clubs from the definition of 'industry' in the following terms :

    a. "Para 179. One of the exceptions carved out by the Court is in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it regal, **sovereign** or by any other name. I see no justification for excepting these categories of public utility activities from the definition of "industry".
    b. Para 180. … Therefore, activities which are dominated by **charitable** motives, either in the sense that they involve the rendering of free or near-free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition in Section 2(*j*). It is as much beside the point to inquire who is the employer as it is to inquire why is the activity undertaken and what the employer does with his profits, if any.
    c. Para 181. Judged by these tests, I find myself unable to accept the broad formulation that a **solicitor's** establishment cannot be an industry….. I consider that in the present state of the law it is difficult by judicial interpretation to create exemptions in favour of any particular class.

d. Para 182. The case of the **clubs**, on the present definition, is weaker still; and not only do I consider that the definition squarely covers them, except to the limited extent indicated by *Brother Krishna Iyer* in his judgment, but I see no justification for amending the law so as to exclude them from the operation of the industrial laws."

9. *Hon'ble Mr. Justice Jaswant Singh* by a separate opinion on behalf of self and *Hon'ble Mr. Justice Tulzapurkar* delivered on 07.04.1978 disagreed with the opinion of *Hon'ble Mr. Justice Krishna Iyer,* only in respect of inclusion of establishment of doctors, lawyers, teachers etc. within the term 'industry' in the following terms :

   a. Para 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 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."

10. An analysis of the judgement of this Hon'ble Court in *Bangalore Water Supply* leads to the irresistible conclusion that *Hon'ble Mr. Justice Krishna Iyer* on behalf of three Hon'ble Judges with regard to the definition of the expression "industry"

has been endorsed and agreed to by *Hon'ble the Chief Justice MH Beg* in para 146 and para 169 without any reservation. Thus, the opinion delivered by *Hon'ble Mr Justice Krishna Iyer* is the majority opinion of a Bench of seven Hon'ble Judges.

11. It is submitted that this Court in the case of *Trimurthi Fragrances (P) Ltd.*[6] has held that the majority opinion by a Bench is not the opinion of the judges who have delivered the majority opinion but is of the Bench constituting all the judges sitting on the Bench. *Justice Indira Banerjee* while delivering the majority judgement held thus:

> "19. The view of Bhat, J. was expressly concurred by Rao, J. (para 196) and Gupta, J. (para 227). There was no dissent to the view. In view of Article 145(5) of the Constitution of India concurrence of a majority of the Judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.

Justice Hemant Gupta while delivering the concurring opinion held thus:

[6] *Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi),* (2024) 20 SCC 709

> "28. Conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, Conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the Bench strength which was hearing the matter.
>
> 29. Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment."

12. It is pertinent to note that all the Hon'ble judges in *Bangalore Water Supply* have held that the definition of the expression 'industry' under section 2(j) of the Industrial Disputes Act, 1947 is applicable only till a new law is made by the Parliament. *Please see*

    a. *Hon'ble Mr Justice Krishna Iyer :* "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 **superseded by the legislative branch**." (Para 139)
    b. *Hon'ble Chief Justice MH Beg* : "Hence, to artificially exclude State-run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. **The question is one which can only be solved by more satisfactory legislation on it**. Otherwise, Judges could only speculate and formulate tests of "industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon." (Para 168)
    c. *Hon'ble Mr Justice Chandrachud* : "I consider, with great respect, that the problem is far too policy-oriented to be satisfactorily settled by judicial

decisions. **Parliament must step in and legislate in a manner which will leave no doubt as to its intention**. That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels." (Para 175)

d. *Hon'ble Mr Justice Jaswant Singh* : "In view of the difficulty experienced by all of us in defining the true denotation of the term "industry" and divergence of opinion in regard thereto — as has been the case with this Bench also — we think, **it is high time that the legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy** which crops up from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger Benches of this Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases." (Para 187)

Subsequent Legislative Changes

13. That the definition of the expression 'industry' occurring in section 2(j) of the Industrial Disputes Act, 1947 was substituted by section 2(c) of the Industrial Disputes (Amendment) Act, 1982 (Act 46 of 1982) in the following terms.

> *"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;

14. It is, however, pertinent to note that section 2(c) of Industrial Disputes (Amendment) Act, 1982 (Act 46 of 1982) was to come into force only from the date notified by the Central Government under section 1(2) of the Amendment Act. However, the Central Government never notified the enforcement of section 2(c) of the Amendment Act; thus, though the definition of the expression of the term 'industry' was amended by the Parliament, it was never born on the ground due to non-issue of notification by the Central Government.

15. That the Parliament enacted the Industrial Relations Code, 2020 to *"to consolidate and amend the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto."* The Industrial Relations Code has come into force from 21.11.2025 by virtue of Notification No. 5320(E) published in the Gazette of India. Section 2(p) of the Industrial Relations Code has defined the expression 'industry' as:

"(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"

16. The Industrial Relations Code has repealed the Industrial Disputes Act, 1947 vide section 104(1)(c) with effect from the date of notification, that is, from 21.11.2025.

17. It is pertinent to note that wide powers are given to the Central Government to notify any other activity as an industry under sub-clause (iv) of clause (p) of section 2, which power was not there earlier. Thus any particular activity can be included in the definition of 'industry' by the Central Government so as to bring it under the purview of the Industrial Relations Code by a notification.

18. It is pertinent to note that along with the Industrial Relations Code, the Parliament enacted the Occupational Safety, Health & Working Conditions Code, 2020 and the expression 'industry' has been defined in section 2(zd)[7] in identical words.

SUBMISSIONS

19. It is submitted that in view of the new definition of the expression 'industry' under the Industrial Relations Code, the interpretation of the said expression under section 2(j) of the Industrial Disputes Act, 1947 in the *Bangalore Water Supply* Case no longer requires reconsideration, particularly due to the reason that all the Hon'ble Judges constituting the seven Judge Bench have unanimously

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[7] S.2(zd). "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---

(a) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic services; or

(b) 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

(c) any domestic service; or

(d) any other activity as may be notified by the Central Government.

held that the interpretation of the expression 'industry' in the said judgement would be applicable only till such time that a law is made by the Parliament.

20. That the five Judge Bench of this Hon'ble Court in *Jai Bir Singh*[8] has doubted the correctness of the judgement of this Hon'ble Court in *Bangalore Water Supply* Case primarily on the ground that the views expressed by *Hon'ble Mr Justice Krishna Iyer* is on behalf of three Hon'ble Judges and is not a majority opinion. It is submitted that the five Judge Bench failed to notice that *Hon'ble Chief Justice MH Beg* has fully agreed and endorsed the conclusions reached *Hon'ble Justice Krishna Iyer* in para 146 and para 169. Thus, there is no escape from the conclusion that the opinion expressed by Hon'ble Mr *Justice Krishna Iyer* is a binding declaration of law by a Bench of seven judges under Article 141 of the Constitution and was binding on the five Judge Bench in *Jai Bir Singh*.

21. It is submitted that the concern raised by five Judge Bench in *Jai Bir Singh*[9] as regards sovereign and non-sovereign functions of the Government has been taken care of in the new definition of 'industry' under section 2(p) of the Industrial Relations Code. It is submitted that the the sovereign functions and non-sovereign functions of the government have been subject matter of interpretation by this Hon'ble Court from time to time depending on the facts and circumstances of each case. Thus, the very foundation of the reference order on the ground of lack of clarity as regards sovereign function of the government is non-existent and the reference may be rejected.

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[8] S*tate of UP v Jai Bir Singh* (2005) 5 SCC 1.
[9] S*tate of UP v Jai Bir Singh* (2005) 5 SCC 1

22. It is submitted that this Hon'ble Court in *Bangalore Water Supply* has considered all the earlier judgement on the definition of the expression 'industry' and have either approved or overruled the earlier views which were by a Bench of less than seven Hon'ble Judges. Ratio of the following judgements were approved in *Bangalore Water Supply:*

    a. *D.N. Banerji v. P.R. Mukherjee,* (1952) 2 SCC 619
    b. *Baroda Borough Municipality v. Workmen,* (1956) 2 SCC 535
    c. *State of Bombay v. Hospital Mazdoor Sabha,* 1960 SCC OnLine SC 44
    d. *Corpn. of the City of Nagpur v. Employees,* 1960 SCC OnLine SC 45
    e. *Ahmedabad Textile Industry's Research Assn. v. State of Bombay,* 1960 SCC OnLine SC 152

23. The *Bangalore Water Supply* overruled the ratio of the following judgements:

    a. *National Union of Commercial Employees v. M.R. Meher*, 1962 SCC OnLine SC 132
    b. *University of Delhi v. Ram Nath,* 1963 SCC OnLine SC 117
    c. *Safdarjung Hospital v. Kuldip Singh Sethi,* (1970) 1 SCC 735
    d. *Madras Gymkhana Club Employees' Union v. Gymkhana Club,* 1967 SCC OnLine SC 51
    e. *Cricket Club of India v. Bombay Labour Union,* 1968 SCC OnLine SC 132
    f. *Dhanrajgirji Hospital v. Workmen,* (1975) 4 SCC 621

24. It is further submitted that the pronouncement as to the definition of the expression 'industry' in the case of *Bangalore Water Supply* has consistently been followed by this Hon'ble Court. A list of judgements which have followed the ratio the *Bangalore Water Supply* is filed herewith as **Annexure I**.

25. That it is only in two cases that the correctness of the judgement in *Bangalore Water Supply* has been doubted by subsequent Benches, details of which are as follows:

    a. In *Coir Board v Indira Devai*[10], a Bench of two Hon'ble Judges has doubted the correctness of the views of seven Hon'ble Judges in *Bangalore Water Supply* and referred the matter to a Bench of nine Hon'ble Judges. However, subsequently a Bench of three Hon'ble Judges[11] in the same case refused to make a reference saying that two Judge Bench were bound by seven Judge Bench decision.
    b. In *State of U.P. v Jai Bir Singh*[12], a Bench of three Hon'ble judges referred the matter to a larger bench. Subsequently a Bench of five Hon'ble Judges[13] made a reference to larger bench by a detailed judgement which has been agreed to a Bench of seven Hon'ble Judges[14].

26. It is submitted that on the principle of **'Stare Decisis',** the judgment of this Hon'ble Court in *Bangalore Water Supply* does not require reconsideration as it has stood the test of time by various subsequent pronouncements except on two occasions. *Please see*

    a. *Waman Rao vs. Union of India* [15] *:*

> "37. The principle of stare decisis is also firmly rooted in American jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to

[10] *Coir Board v Indira Devai* (1998) 3 SCC 259.
[11] *Coir Board v Indira Devai* (2000) 1 SCC 224.
[12] *State of UP v Jai Bir Singh* dated 31.01.2002 (Vol III, page 96).
[13] *State of UP v Jai Bir Singh* (2005) 5 SCC 1.
[14] *State of UP v Jai Bir Singh* (2017) 3 SCC 311.
[15] *Waman Rao v. Union of India*, (1981) 2 SCC 362.

further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case. [See Harold J. Grilliot : Introduction to Law and the Legal System, 2nd Ed. (1979), p. 132] When the weight of the volume of the decisions on a point of general public importance is heavy enough, courts are inclined to abide by the rule of stare decisis, leaving it to the legislature to change longstanding precedents if it so thinks it expedient or necessary."

b. Shah Faesal v. Union of India[16]

"17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, "It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness".

18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law."

[16] *Shah Faesal v. Union of India,* (2020) 4 SCC 1.

27. In view of the submissions made hereinabove, this Hon'ble Court may be pleased to reject the reference and upheld the views expressed by a seven Judge Bench of this Hon'ble Court in *Bangalore Water Supply* as regards the meaning of the expression 'industry' in section 2(j) of the Industrial Disputes Act, 1947.

Settled By :
Vijay Hansaria, Senior Advocate

Drafted By :
R Santhanam, Advocate

Assisted By :
Ms Kavya Jhawar, Advocate
Ms Nandini Rai, Advocate
Mr Aashay Shukla, Advocate

FILED BY

D Mahesh Babu
Advocate for the Respondents

Annexure I

List of judgements which have followed the ratio laid down in *Bangalore Water Supply* :

1. *LIC v. D.J. Bahadur*, (1981) 1 SCC 315

> "22. The ID Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. Industrial peace is a national need and, absent law, order in any field will be absent. Chaos is the enemy of creativity sans which production will suffer. Thus, the great goal to which the ID Act is geared is legal mechanism for canalising conflicts along conciliatory or adjudicatory processes. The objective of this legislation and the component of social justice it embodies were underscored in the *Bangalore Water Supply and Sewerage Board* v. *Rajappa…."*

2. *Gopalji Jha Shastri v. State of Bihar,* (1983) 2 SCC 4

> "2. The point raised in this appeal would be covered by the decision of the Constitution Bench composed of seven Judges of this Court in *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa* [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207] . The wide sweep of expression "industry" as interpreted therein will comprehend Bihar Khadi Gramodyog Sangh and, therefore, following the decision it must be Held that Bihar Khadi Gramodyog Sangh is an industry within the meaning of the expression of Section 2(*j*) of the Industrial Disputes Act, 1947. Consequently, the contention raised in this appeal must fail. That being the only point, the appeal fails and is dismissed."

3. *Karnani Properties Ltd. v. State of W.B.*, (1990) 4 SCC 472 - Real estate company held an industry

> "9. From the aforesaid findings recorded by the High Court, with which we find no reason to disagree, it is evident that the activity carried on by the appellant falls within the ambit of the expression "industry" defined in Section 2(*j*) of the Act as construed by this Court in *Bangalore Water Supply and Sewerage Board case* [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207] . The award of the Industrial Tribunal cannot, therefore, be assailed on the basis that the appellant is not carrying on an industry under the Act."

4. Surendra Kumar Gyani v. State of Rajasthan, (1992) 4 SCC 464

> "2…..The learned Judge was of the view that as no specific tenure was fixed for determining the service of the Lower Division Clerks employed on daily wage basis, the respondents were required to give retrenchment compensation in accordance with the provisions of Section 25-F of the Act. But such retrenchment compensation not having been paid in accordance with the Act, the impugned orders of termination were illegal and invalid. The learned Judge, therefore, quashed the orders of termination of service of the writ petitioners and directed that the writ petitioners would be entitled to be reinstated with full back wages."

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

> "13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in *Bangalore Water Supply case* would get

eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable.

17. This being the position, we hold that the aforesaid 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. We would say the same qua the social foresting work undertaken in Ahmednagar district. There was, there-fore, no threshold bar in knocking the door of the Industrial Courts by the respondents making a grievance about adoption of unfair labour practice by the appellants."

6. *Physical Research Laboratory v. K.G. Sharma*, (1997) 4 SCC 257

"9. In this context, it is useful to refer to *Chief Conservator of Forests*[17]wherein this Court, while rejecting the contention that as sovereignty vests in the people the concept of sovereign functions would include all welfare activities on the ground that taking of such a view would erode the ratio in *Bangalore Water Supply case*, observed that "the dichotomy of sovereign and non-sovereign functions does not really exist — it would all depend on the nature of the power and manner of its exercise". After referring to the three traditional sovereign functions namely legislative power, the administration of laws and the exercise of the judicial power and also the decision of the Gujarat High Court in *J.J.*

[17] *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare* (1996) 2 SCC 293

Shrimali[18]wherein famine and drought-relief works undertaken by the State Government were held not to be an "industry", this Court observed that: "What really follows from this judgment is 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."

7. *GM, Telecom v. A. Srinivasa Rao*, (1997) 8 SCC 767

"5. The above point arises for consideration out of a reference made under Section 10-A of the Industrial Disputes Act, 1947, which matter is now pending in the High Court. The contention of the appellant throughout has been that the reference was incompetent since the Telecommunication Department of the Union of India is not an "industry" within the meaning of its definition contained in the existing unamended Section 2(*j*) of the Industrial Disputes Act, 1947. Admittedly, this question has to be answered according to the decision of this Court in *Bangalore Water Supply* which is a binding precedent. The dominant nature test for deciding whether the establishment is an "industry" or not is summarised in para 143 of the judgment of Justice Krishna Iyer in *Bangalore Water Supply case*..."

8. *All India Radio v. Santosh Kumar*, (1998) 3 SCC 237

"4. The solitary contention canvassed before us by the learned Senior Counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(*j*) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court

[18] *J.J. Shrimali* v. *District Development Officer* (1989) 1 Guj LR 396

consisting of seven learned Judges in the case of *Bangalore Water Supply* save and except the sovereign functions, all other activities of employers would be covered within the sweep of term "industry" as defined under Section 2(*j*) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set-up, as seen from Annexure 1 [annexed to SLPs (C) Nos. 7722-7722-A of 1993], being the extracts from Doordarshan Manual Vol. I, it cannot be said that the functions carried on by them are of a purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio. However, learned Senior Counsel for the appellants vehemently relied upon a decision of this Court in the case of *Bombay Telephone Canteen Employees' Assn., Prabhadevi Telephone Exchange*[19]. It is true that in that case a Bench of two learned Judges took the view that the telephone exchanges run by the Central Government were discharging sovereign functions and, therefore, the employees working in the canteen run by such telephone exchanges cannot be said to be working in an "industry" as defined under Section 2(*j*) of the Act. However, the said decision has been expressly overruled by a judgment of a three-Judge Bench of this Court in the case of *G.M., Telecom*[20]. In that case, Chief Justice Verma speaking for the three-Judge Bench in para 7 of the Report has expressly overruled the said decision. In that decision another decision in *Sub-Divisional Inspector of Post*[21] is also overruled. It

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[19] *Bombay Telephone Canteen Employees' Assn., Prabhadevi Telephone Exchange* v. *Union of India* (1997) 6 SCC 723

[20] *G.M., Telecom* v. *A. Srinivasa Rao* (1997) 8 SCC 767

[21] *Sub-Divisional Inspector of Post* v. *Theyyam Joseph* (1996) 8 SCC 489

has been held in the said decision that the ratio of the Constitution Bench judgment in *Bangalore Water Supply* holds the field and the amendment to the definition of Section 2(*j*) as made in 1982 is not yet brought in force and so long as the amending definition does not come into force the decision in *Bangalore Water Supply* will hold the field. Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(*j*) of the Act and the said definition is operative being applicable at present and as existing on the statute-book as on date."

9. *Samishta Dube v. City Board, Etawah*, (1999) 3 SCC 14

"5. On the question whether the Municipal Board could be treated as an "industry" within the meaning of the said word in Section 2(*k*) of the U.P. Industrial Disputes Act, 1947, learned counsel for the appellant has relied upon the judgment of this Court in *Bangalore Water Supply*. The question was elaborately gone into by Krishna Iyer, J. and this Court approved the decision in *Corpn. of the City of Nagpur*[22] where Subba Rao, J. (as he then was) held that in view of the application of the twin tests, namely, (*i*) primary and predominant activity test and (*ii*) the integrated activity test, the Municipal Corporation was an "industry" and that, in particular, the employees in the Education Department, the Health Department and the General Administration Department were to be treated as working in an "industry"."

10. *State of Gujarat v. PWD Employees Union*, (2002) 10 SCC 147

"1. Having heard learned Senior Counsel Shri Dholakia for the appellant State we do not think that this is a fit case for our interference. The sole

[22] *Corpn. of the City of Nagpur* v. *Employees* AIR 1960 SC 675

question is whether PWD is an industry, and therefore, governed under the Industrial Disputes Act, 1947. This question is squarely covered by a decision of the Constitution Bench in the case of *Bangalore Water Supply*. It is true that earlier a Bench of two learned Judges wanted this decision to be reconsidered but that reference has been sent back by a larger Bench of this Court and the decision in the case of *Bangalore Water Supply* SC therefore, holds the field. Consequently, this appeal does not survive any further for consideration of the aforesaid question. It is, therefore, dismissed."

11. *Executive Engineer, CPWD v. Madhukar Purshottam Kolharkar*, (2002) 9 SCC 622

"2. The High Court held that in view of the decision of this Court in *Bangalore Water Supply* the Central Public Works Department could not any longer contend that it was not an industry and that view was further supported by the two other decisions noticed by the High Court. We do not think there is any substance in this argument advanced on behalf of the appellant in this regard."

12. *Parmanand v. Nagar Palika, Dehradun*, (2003) 9 SCC 290

"5. Shri Bharat Sangal, learned advocate for the appellant at the very outset pointed out that there are several decisions of this Court holding that a municipality except in relation to certain departments should certainly be treated as an industry for the purpose of the Act. Shri Dinesh Dwivedi, learned Senior Advocate for the first respondent submitted that now the municipalities have become constitutional creatures and their position stands elevated to the status of State and they are carrying on certain governmental functions and therefore the decisions rendered earlier which are not taking note of this position should not influence us in

reaching the conclusion that the first respondent is an industry or not. This aspect need not detain us long for the purpose for which municipality or its activities when brought within the purview of the Constitution was entirely different and such inclusion does not take it out of the definition of industry for the activities carried on by that institution is an industry. This Court held in *Corpn. of the City of Nagpur*[23]the activity of Municipal Corporation carried on in any of the departments except those dealing with assessment and levy of house tax, assessment and levy of octroi, removal of encroachment and removal and pulling down of dilapidated houses, prevention and control of food adulteration and maintenance of cattle pounds, to fall within the definition of "industry" as arising under the Industrial Disputes Act. This decision was reiterated in *Bangalore Water Supply*. It is further explained by this Court in *Samishta Dube*[24] with reference to municipalities in the State of U.P. In that view of the matter we do not think inclusion of the municipalities in the Constitution by itself would dilute the effect of the decisions referred to by us. Hence we do not think the High Court is justified in holding that Nagar Palika is not an industry for the purpose of the Act."

13. *Som Vihar Apartment Owners' Housing Maintenance Society Ltd. v. Workmen*, (2002) 9 SCC 652

"2. The appellant raised an objection that the reference is beyond the jurisdiction of the Tribunal inasmuch as the appellant is not an industry and the workmen on whose behalf the respondents are espousing their cause are not workmen under the Industrial Disputes Act and therefore, the reference is bad. Dealing with this aspect of the matter the Tribunal came to the conclusion placing reliance on the decision of this Court in

[23] *Corpn. of the City of Nagpur* v. *Employees*, AIR 1960 SC 675 : (1960) 2 SCR 942
[24] *Samishta Dube* v. *City Board, Etawah* (1999) 3 SCC 14

Bangalore Water Supply and distinguishing the decision in *T.K. Ramesan*[25] held that the Housing Society in this case is an industry and its employees are workmen under the Industrial Disputes Act and proceeding further, the Tribunal rejected the various claims raised on behalf of the respondents except in relation to the one relating to uniform and that relief was granted."

14. *Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy*, (2013) 8 SCC 345

"19. In *Bangalore Water Supply* this Court dealt with the terms "regal" and "sovereign" functions, and held that such terms are used to define the term "governmental" functions, despite the fact that there are difficulties that arise while giving such a meaning to the said terms, for the reason that the Government has now entered largely the field of industry. Therefore, only those services, which are governed by separate rules and constitutional provisions such as Articles 310 and 311, should strictly speaking, be excluded from the sphere of industry by necessary implication."

15. *Raj Kumar v. Director of Education*, (2016) 6 SCC 541

"29. The issue whether educational institution is an "industry", and its employees are "workmen" for the purpose of the ID Act has been answered by a seven-Judge Bench of this Court way back in the year 1978 in *Bangalore Water Supply*. It was held that educational institution is an industry in terms of Section 2(*j*) of the ID Act, though not all of its employees are workmen."

[25] *T.K. Ramesan* v. *A.O. Thomas, Secy., Maintenance Committee* [1995 Lab IC 813 (Ker)]

16. *AIIMS v. Raj Singh*, (2017) 12 SCC 803

> "3. The High Court, after going through the facts of this case, and relying on the decision of the Constitution Bench of this Court in *Bangalore Water Supply* to the effect that hospitals, research institutes and training centres render valuable material services to the community qualifying for coming within the purview of Section 2(*j*) of the Industrial Disputes Act, 1947 affirmed *AIIMS* v. *Raj Singh*,[26] the award. Incidentally, that the view in *Bangalore Water Supply & Sewerage Board* was followed by this Court in certain other decisions viz. *V.P. Chaturvedi*[27] as well as in *V.L. Chandra*[28]was also noted. In view of the said authorities, the High Court held in Aiims v. *Raj Singh* (Supra) that there is no reason to hold that AIIMS did not come within the purview of Section 2(*j*) of the Industrial Disputes Act and passed the order in favour of Raj Singh."

17. *P.B. Nayak v. Bhilai Steel Plant*, (2022) 13 SCC 727

> "27. It was further found that Steel Club—the second respondent, may be held to be an industry under Section 2(*f*) of the Industrial Disputes Act, 1947, as held by this Court in *Bangalore Water Supply* and the appellants may be held to be its employees. However, the provisions of the Shops and Establishments Act, cannot be made applicable to such Steel Club, in view of the exemption available under Section 3(1)(*j*) of the Act."

18. *LIC v. Vita*, 2025 SCC OnLine SC 2772

> "11.2. A similar situation of violating/breaching the doctrine of stare decisis was dealt with by this Court in General Manager, Telecom v. A.

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[26] *AIIMS* v. *Raj Singh*, 2007 SCC OnLine Del 1713.
[27] *V.P. Chaturvedi* v. *Union of India*, (1991) 4 SCC 171.
[28] *V.L. Chandra* v. *AIIMS*, (1990) 3 SCC 38.

31

Srinivasa Rao, holding that the bench of lesser strength cannot take a view contrary to, or bypass, that has been taken by a larger Bench. The issue was with regard to concept and definition of 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. A two-Judge Bench in Sub-Divisional Inspector of Post v. Theyyam Joseph held that the functions of the Postal Department, since part of the sovereign functions of the State, the Department would not be an 'industry'. This view was taken and the decision was rendered without reference to the seven-Judge Bench decision in Bangalore Water Supply and Sewerage Board v. A. Rajappa. It was noticed that in the later decision in Bombay Telephone Canteen Employees' Assn. v. Union of India, a Bench having strength of two-Judges followed the decision of Theyyam Joseph (supra) to hold that the Telephone Nigam was not an 'industry'. In Bombay Telephone Canteen Employees' Assn. (supra), the Court although had referred to the Bangalore Water Supply and Sewerage Board(supra), the two-Judge Bench proceeded to distinguish Bangalore Water Supply and Sewerage Board (supra) to observe that if the law laid down in Bangalore Water Supply and Sewerage Board is followed, then catastrophic consequences would ensue."

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1274/2007

IN THE MATTER OF:

THE PRINCIPAL GOVT., ITI, COLLEGE & ORS. APPELLANTS

VERSUS

R.D. NAIK RESPONDENT

LIST OF DATES AND WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE RESPONDENT
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

IN THE SUPREME COURT OF INDIA
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IN THE MATTER OF:

THE PRINCIPAL GOVT., ITI, COLLEGE & ORS. APPELLANTS

VERSUS

R.D. NAIK RESPONDENT

LIST OF DATES ON BEHALF OF THE RESPONDENT

The appellant herein has challenged the order dated 08-05-2005 passed by the high court upholding the directions issued by the labour court regarding reinstatement and setting aside the grant of back wages.

Date	Event
03.01.1994	The respondent was Employed on daily wage basis by the petitioner as group 'D' employee on a consolidated salary of Rs. 200/- per month for a period of 11 months.
05.10.1996	Alleged termination of the respondent service.
1997	The Respondent herein filed an application under Section 10(4-A) of the I.D. Act 1947 and raised a dispute.
31.01.2000	The Labour Court Hubli in KID NO.12/1997 has passed the award for reinstatement with 50% back wages. A copy of the same is herewith produced as Annexure-P1.
03.11.2000	W.P.No.34825/2000 filed before the Hon'ble High Court of Karnataka challenging the award passed by the Labour Court, Hubli.
08.09.2005	The learned single Judge of the Hon'ble High Court of Karnataka partly allowed the writ petition filed by the Petitioner by setting aside the back wages and maintaining the reinstatement order.
16.10.2006	The present Special Leave Petition is filed by Appellant before this Hon'ble Court seeking interim relief along with application for condonation of delay.

02/03.2007 Leave granted.

15.07.2009 The Matter has been tagged with Jai Bir Singh Case (Civil Appeal No 897/2022).

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for welfare of public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given to the definition of INDUSTRY considering the welfare and benefit of the employees and to prevent their exploitation. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organisation.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes

Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

In 1970, in the case of **Management of Safdarjung Hospital v/s. Kuldip Singh Sethi,** In this case, the issue arises "whether a firm of solicitors constitutes an industry?". And it was held that the essential basis of industrial disputes is that the dispute must arise between capitalist and labour in enterprises were capitalist and labour combine to produce commodities or provide service.

It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

Case of Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.

1. In 1978, in the Landmark case of Bangalore Water Supply and Sewerage Board v. A. Rajappa The the constitution bench has given liberal interpretation to the word industry and held that hospitals, clubs, and educational institutions, research and charitable institutions as industries and this was ruled out in the ratio of 3:2 of Hon'ble judges.

It overruled its earlier decisions given in the cases of Safdarjung Hospital vs. K.S sethi AIR 1970 SC 1407. National Union of commercial Employees vs. M.R Meher AIR 1962 SC 1080, University of Delhi v. Ram Nath AIR 1963 SC 1873.

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Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, 1958 SCC OnLine SC 4

1. The majority, led by Justice S.K. Das, interpreted the definition of "industrial dispute." The term "any person" in the definition was deemed not to encompass all individuals but those with a direct or substantial interest related to employment, non-employment, terms, or conditions of labor. The Court rejected a broad interpretation.

2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as industrial disputes, contingent on workmen's interest.

3. The majority decision dismissed the appeal, stating that Dr. Banerjee was not a 'workman,' and the dispute did not qualify as an industrial dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay,

1949 SCC OnLine FC 12

1. That a dispute in regard to the reinstatement of a dismissed employee is a dispute "connected with the employment or non-employment of a person" and is therefore an "industrial dispute" within the meaning of s. 2, cl. (k), of the Industrial Disputes Act, 1947.

2. that the definition of the term "employer" in s. 2, cl. (g), of the said Act is not exhaustive or inclusive and does not limit the application of the Act to undertakings carried on by the Central or Provincial Government or a local authority. The Act applies also to industries carried on by private individuals and associations.

D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619

1. The Act defines "industry" and "industrial dispute" as any business, trade,

undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

2. The meaning of "industry" and "industrial dispute" in a modern society, where disputes were not isolated but rather a result of a continuous process of social evolution. It emphasizes the need for legislation to address the significant problems that arise in the industrial field, ensuring that society remains adaptable and responsive to changing circumstances.

State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44

1. In this case respondents 2 and 3, who were ward servants at J. J. Group Of Hospital in Bombay under state control, were retrenched without compensation, violating S. 25F(b) of the Industrial Disputes Act, 1947. They sought a writ of mandamus from the High Court, but the single judge dismissed it, stating that non-payment of compensation didn't invalidate retrenchment as S. 25I provided a remedy for recovery.

2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

3. This Hon'ble court held that the doctrine of quid pro quo (profit motive) wasn't crucial in determining whether an activity qualifies as an industry.

Corpn. of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45

1. The question was whether the municipal activities of the Corporation of Nagpur City fell within the definition of 'industry' as per the C.P. and Berar Industrial Disputes Settlement Act, 1947. Disputes arose between the Corporation and its employees, and the State Government referred them to the State Industrial Court.

The Industrial Court ruled that the Corporation and most of its departments were covered by the definition of 'industry.The High Court rejected the contention.

2. The supreme court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only activities analogous to trade or business could be industries. It affirmed that if a service rendered by a corporation qualified as an industry, the employees of the departments connected with that service were entitled to the benefits of the Act.

3. The court also ruled that if a municipal department discharged multiple functions, some falling within and some outside the definition of industry, the predominant functions of the department would be the criterion for the purposes of the Act.

University of Delhi v. Ram Nath, 1963 SCC OnLine SC 117

1. The University of Delhi and Miranda House (a college affiliated with the University) were found not to constitute an "industry" under the Industrial Disputes Act, 1947.

2. The Tribunal rejected the appellants' contention and awarded retrenchment compensation to the respondents

3. The Supreme Court held that the work of education, especially in institutions like the University of Delhi, is primarily carried out with the assistance of teachers. Considering the exclusion of the whole class of teachers from the definition in Section 2(s), the court concluded that it could not have been the policy of the Act to treat education as an industry, particularly for the benefit of a minor and insignificant number of subordinate staff.

Cricket Club of India Ltd. v. Bombay Labour Union, (1969) 1 SCR 600.

1. The court pointed out that the income earned by the club, such as rents from immovable properties, was not attributable to the aid and cooperation of employees. The facilities provided, including residential accommodation and catering were primarily for the club members and not in the nature of running a hotel or systematic business for profit.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

    a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an 'industry' in that enterprise.

    b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

    c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

    d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggested that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Devai P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and

crafts.

IV. Analysis of Industry As Appears From The combined Reading of various judicial pronouncements by the Hon'ble Supreme court

Following is not to be industry

i. 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.

ii. educational, scientific, research or training institutions; or

iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

iv. khadi or village industries; or hospitals or dispensaries

v. 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

vi. Any domestic service; or

vii. 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

viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide order dated

05-05-2005.

The three judges bench vide order dated 31-1-2002 , in the matter of state of up versus Jaibir Singh referred the matter regarding the question of interpretation of industry to the larger bench.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt it is a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act ,the issue of

industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Petition Filed by the Petitioner/Appellant and interpret the definition of industry, accordingly in the interest of workmen.

FILED BY NIDHI,
LEGAL SERVICE COUNSEL-CUM-CONSULTANT,
COUNSEL FOR RESPONDENT
AOR (CODE-1379)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO.4329/2008

IN THE MATTER OF:

THE ASSISTANT EXECUTIVE ENGINEER,
ZILLA PANCHYAT — APPELLANT

VERSUS

GANGADHAR — RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE RESPONDENT
MS. NIDHI [AOR CODE: 1379], LSC, SCLSC

INDEX

S.NO	PARTICULARS OF DOCUMENT	PAGE NO
1.	LIST OF DATES AND WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT	3-4

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LIST OF DATES ON BEHALF OF RESPONDENT

The appellant herein has challenged the order dated 06-06-2007 passed by the high court upholding the directions issued by the Industrial tribunal regarding reinstatement and pay the back wages from 22.10.1999 till the date of actual reinstatement and further holding that the appellant is an Industry.

Date	Event
01.01.1988	The respondent was employed on daily wage basis by the petitioner.
19.08.1999	Alleged termination of the respondent's service
13.08.2002	The Labour Court, Mysore passed an Award directing the petitioner to reinstate the respondent to the same post in which he was working with continuity of service with back wages. (**ANNEXURE-P1, PAGE 21 – 28**)
05.04.2004	Writ Petition No.16081 of 2004 is filed before the Hon'ble High Court of Karnataka at Bangalore, challenging the aforesaid Award of the Labour Court, Mysore.
06.06.2007	By Order of the single Judge, the Writ Petition is dismissed. The Award passed by the Labour Court, Mysore has been confirmed.

03.11.2007	Present Special Leave Petition filed.
28.03.2008	An application for condonation of delay in filing Special leave Petition.
18.10.2016	Tagged with Jai Bir Singh Case.

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given considering the welfare and benefit of the employees. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organisation.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under

the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government, including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act. 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

6

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

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It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

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1. The Act defines "industry" and "industrial dispute" as any business, trade, undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

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2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

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b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

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d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggests that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

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ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt is rather a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act. The issue of industry was required to be referred to the larger bench.

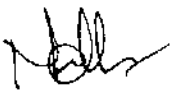
ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature.

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Civil Appeal Filed by the Petitioner and interpret the definition of industry accordingly.



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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Special Leave Petition (C) NO. 12679-682/2014

(Arising out of Writ Appeal nos. 993 and 994 of 2004)

IN THE MATTER OF:

The Commissioner,
H.R. & C. E. Administration,
Nungambakam High Road,
Chennai. 600 006 & Anr .... PETITIONERS

VERSUS

D. Ranganathan & Ors ... RESPONDENTS

SYNOPSIS

1. The Civil Appeals comprised in C.A.4505 and 4506 of 2013 has been filed by the Temple Management against the gratuity claim ordered by the Authority under the Payment of Gratuity Act.
2. S.L.P. (C)Nos.12679 to 12682 of 2014 the temple management has filed the present S.L.P assailing the order of the Full Bench dated 17.09.2012, holding the temple employees eligible for Gratuity in the Writ Petitions filed by them challenging the vires of clause 26 of the H.R. & C.E. Rules disallowing Payment of Gratuity.
3. The issue with reference to the above two batch of cases predominantly relate to the determination made by the Hon'ble High Court, holding that the temple is an Establishment and the employees are entitled for gratuity.
4. These batch of cases do not pertain to the issue whether the Management is an industry, but only with reference to whether the temple management is an Establishment within the meaning of the provisions of the Gratuity Act.

5. The term establishment as it is defined in the various statutes are culled out here.

(i) The Payment of Wages Act, 1936 defines the term establishment under Sec. 2 (ii) (g) as follows:-

"Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation; or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on"

(ii) The Tamil Nadu Payment of Subsistence Allowance Act, 1981 defines the term establishment under Sec. 2 (c) as follows:-

"Establishment" means any place where any industry trade business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends but does not include-

(i) xxx

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(iii) The dictionary meaning of the word "Establishment" is as follows:

"Organised body of men maintained for a purpose - where the relationship of employer and employee comes into existence".

(iv) The Payment of Gratuity Act, 1972 provides for a scheme for Gratuity to employees engaged in factories, mines, oil fields, plants, ports, railway Companies,. ships or other establishments and for matters connected therewith or incidental thereto.

(v) The applicability of the Act is defined as follows; under Sec. 1, 3 (b) as follows: -

(1)(3)(b) Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months".

(vi) The Hindu Religious and Charitable Endowment Act 1959 and the rules framed thereunder, namely, the Tamil Nadu Hindu Religious Institutions (Officers & Servants) Service Rules, 1964 grants Gratuity benefits under clause 26 as follows:

"26. Gratuity - (1) Every non-hereditary Officer or servant who retires or dies after completing ten years of service in a religious institution included in the list published under

section 46 of the Act shall become eligible for a gratuity at the rate of half a month's salary for every completed year of service subject to a maximum of 15 month's salary:

Provided that this rule shall not apply to any such institution where the Contributory Provident Fund Scheme is in force.

Explanation - (1) Fraction of a year equal to six months and above shall be treated as completed year.

6. The Select Committee which examined the bill to provide for a scheme of Payment of Gratuity to the employees examined the scope of the definition and its applicability. It intended to secure the object of the Act in such a manner that the Constitutional obligation as enshrined under the Directive Principles of the State are achived. Articles 41 & 43 are designed to enable the State to secure the "right to work" and the condition to "ensure a decent standard of life and full enjoyment of leisure to all workers Agricultural, Industrial or otherwise". Under the Gratuity Act, to determine the entitlement of a worker to enjoy the benefit of gratuity, it is sufficient if the organisation in which the worker is engaged is proved to be an `Establishment', as contemplated under the provisions of the Gratuity Act, no further exercise whether an establishment is an Industry as defined under the Industrial Disputes Act, need to be examined.
7. In so far as the decision of the Hon'ble Division Bench of the Madras High Court, the Management of S.I.E.T .vs. Mohamed

Ibrahim and others, reported in 1992 Writ L.R. 155 had examined the definition of the term "establishment" and its applicability and the manner in which the same has to be applied to determine the coverage of the Act. The Hon'ble Division Bench in the decision of Management of S.I.E.T., by an elaborate discussion of the term Establishment' rendered a finding as follows:

> **"7. A Division Bench of the Allahabad High Court has in U.P. Co-operative Union and others v. Prabhu Dayal Srivastava and others 1988 (57) F.L.R. 70 held that the world "establishment" as used under Section 1(3)(b) and Section 1(3)(c) of the Act connotes an organised body of men and women employed where the relationship of employer and employee comes into existence.**
>
> **The Division Bench has taken the view that the Act being a progressive, Social and beneficial legislation, the construction, relying upon the meaning of the word "establishment" as found in the dictionaries. The Bench held that the Act would apply to an apex-co-operative society registered render the U.P. Co-operative Societies Act, 1965. "**

8. The following Supreme Court decisions are being relied upon to understand the term `Establishment' as defined under the Gratuity Act.

   (a) State of Punjab -vs- Labour Court, Jullundur and Others 1981-I-LLJ-354

In the above decision the applicability of the term "Establishment" to a project under the Hydel Department of the Government of Punjab was in issue. Para (3) of the judgment held that the term "Any Law for the time-being in force in relation to Shops and Establishments in a State", is an expression comprehensive in its scope and can mean a law in relation to Shops or as well as separately a law in relation to Establishments, or a law in relation to commercial establishments and a law in relation to non-commercial establishments. As per the observations of the Hon'ble Supreme Court, so long as an enactment, that has been made applicable to the temple determines the temple as an "establishment" as per the definition contained in the said enactment for granting the coverage/benefits under the enactment, the said law is within Section 1 (3) (b) of the Gratuity Act. Hence, when the employees of the temple are granted subsistence allowance while being placed under suspension for the proposed disciplinary action, only by applying the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, accordingly the temple is an establishment as contemplated under section 1(3)(b) of the Payment of Gratuity Act.

(b) A.I.R. 1984 SC 1842, Jeewanlal (1929) Ltd. Etc -Vs- The Appellant Authority Under the Payment of Gratuity Act.

In the above decision initially, the Validity of the Gratuity Act was tested before the Hon'ble Madras High

Court in the Judgment rendered in Jeevanlal 1929, reported in (1962) 1 LLJ 86. The Hon'ble Division Bench of the Madras High Court had categorically upheld the validity of the Act and held that the Act did not violate Article 14& 19(1)(g) of the Constitution of India. Though the issue before the Hon'ble Division Bench of Madras High Court was predominantly two *fold*, firstly the jurisdictional control over the Offices of a Public Limited Company which had its Regional Office at Calcutta and branches at various States in India. Secondly, the manner in which the gratuity quantum could be arrived at, The Hon'ble Division Bench while determining the jurisdictional control which the Authority can exercise under the Payment of Gratuity Act, in Para (10) held that the meaning given to the word "establishment" was to be decided in the following terms;

"On consideration of the matter, I think there is force in the argument of Mr. Gopalaratham that there can only be a factory, port, mine, oilfield etc., in S.1(3) as well as S.2(e) *and* (f) the word "establishment" has been used disjunctively in justaposition to the words "factory mine, oilfield, plantation, etc., 'Merely because the preamble contains the words 'or other establishments' and S.2(a) affords scope for the word "establishment" being prefixed to

the words "of a factory: occurring in sub-cl.(c) affords scope for the word "establishment" being prefixed to the words "of a factory" occurring in sub-cl.(c) and "of a major part, mine, oilfield, or railway company" occurring in sub-clause (d) it is not possible or held that the Legislature intended to enlarge the meaning of the words "factory", major port, mine, oilfield. etc. etc., by tacking on the word, "establishment" to them. This inference is inescapable because, as already stated, sub-clause (g) (i)(j), (l), (m). (n) and (p) restrict the meaning of the appropriate word found in the sub-clauses to the meaning given to them in the parent Acts referred to therein. For example, in sub-clause (2(g) the word "factory" has been assigned the meaning given to it in clause (m) of S.2 of the Factories Act, 1948. Having given such a definition, the Legislature would not have intended to enlarge the meaning of the word factory by describing it as "establishment of a factory". Section 2m, the wording of which has presumably led the second respondent to hold that there can be an establishment of a mine, is

intended to cover (i) establishments belonging to or under the control of the Central Government and (ii) establishments having branches in more than one State, as well as (iii) factories belonging to or under the control of the Central Government and (iv) major ports, mines, oilfields or railway companies. It is on account of the composite nature of the sub-section, the word "establishment" has been used even with reference to factory, major port, mine, etc. Therefore, the view of the second respondent that the Gratuity Act is applicable not only to 'factories and mines but also to establishments related to such factories and mines is not correct'.

On appeal before the Hon'ble Supreme Court (reported in 1984 AIR 1842), the appeal was confined more with reference to the second limb of the challenge made before the Hon'ble Division Bench of Madras High Court. i.e. with reference to the determination of quantum. Hence, the interpretation of the term `Establishment' as held by the Hon'ble Division Bench was also upheld.

(c) **(1989) I Supreme Court Cases 583, Workmen of Tirumal Tirupathi Devasthanam -Vs- Management and another**

In the above decision the issue whether the transport department run by the Devasthanam was to be treated as an institution by itself to grant the benefit of bonus under the bonus act was determined.

(d) **(1984) 3 Supreme Court Cases 518 Katheeja Bai - Vs.-Superintending Engineer & others**

In the above decision the Hon'ble Supreme Court considered the issue as to when the employer extends benefits of payment of Special Contributory Provident Fund to its workmen, the workers would not be entitled to payment of Gratuity under the Payment of Gratuity Act.

The Tamilnadu Electricity Board contended that since Gratuity under the Payment of Gratuity was paid to the employee, they were not obliged to make payment of contribution under its regulation excluded the payment of Special Contributory Provident Fund if Gratuity is paid.

The Hon'ble Supreme Court in the said decision held that a Special Provident Fund is not an alternative to Gratuity payment and hence the denial of such Special Provident Fund benefit is violative of fundamental rights of an employee (Paras (6) & (7) of the judgment).

(e) **(2010) 2 Supreme Court Cases 44 - Allahabad Bank and another -Vs- All India Allahabad Retired Employees Association.**

In the above decision the Hon'ble Supreme Court held that by virtue of the non-obstante provision in Sec.14 of

the Payment of Gratuity Act has overriding effect and held that:

"being a welfare legislation, such statutes always receive a liberal construction. They are required to be settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country".

9. In the following decisions, various High Courts have determined certain institutions including temple as an establishment within the meaning of The Payment of Gratuity Act:

(i) **Decision of the High Court of Allahabad**
(i) 1988 (2) Labour Law Notes - 625
UP Cooperative Union - Vs - Prabhu Dayal Srivatsav and others (Paras (5) & (11)).

(ii) **Decision of the High Court of Bombay**
(ii) 1991 1 Labour Law Journal - 190
Sarada (Pvt) Ltd - Vs- Kisan K.Borade (Paragraphs (3), (7), (9).)

(iii) 1993 (2) Labour Law Journal - 487 (Paras (9), (10)).
Poona Contonment Board -Vs- S.K.Das.

(iv) **Decision of the High Court of Gujarat**
(iv) 2004 (I) Labour Law Journal - 802
Indian Red Cross Society - Vs- Vidyaben H Vyas (Para 10)

(v) **Decision of the High Court of Karnataka**

(v) 2008 (I) Labour Law Journal - 122

Management of Sir Venkatraramana Temple Sri Hale Mariyamma Temple, Kapu -Vs- Deputy Labour Commissioner and others.- (Paras (12),(13).

10. The various decisions deal with the term "Establishment" under the provisions of Sec 1(3) (b) of the Payment of Gratuity Act including Temple and such other Establishments which were determined to be eligible to be extended the benefits of gratuity to its employees.

Drawn by:

Filed by:

G. Thilakavathi
Advocate
Drawn on: 23-11-2016
Filed on: 24-11-2016

GAUTAM NARAYAN
Advocate for the Respondents

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION NO.1857/2016

IN THE MATTER OF:

ZILLA PARIVIKSHA VA
ANURAKSAN SANGHATNA. APPELLANT

VERSUS

MRS. SHRUTI CHANDRASHEKHAR
MOGHE RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

ADVOCATE FOR THE PETITIONER
MS. NIDHI [AOR CODE: 1379] LSC, SCLSC

INDEX

IN THE SUPREME COURT OF INDIA
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IN THE MATTER OF:

ZILA PARIVIKSHA VA
ANURAKSHAN SANGHATNA. . APPELLANT

VERSUS

MRS. SHRUTI CHANDRASHEKHAR
MOGHE RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPODENT

The petitioner has challenged the order dated 30-9-2015 passed by Hon'ble Bombay High Court dismissing the Writ petition filed by petitioner on the ground that the interference on the decision taken by the labour court upheld by the Ld. Industrial Tribunal that the petitioners an industry is unwarranted and the case of the Respondent should be decided on merits .

Date	Event
09.12.1997	The Respondent was appointed by the Petitioner by appointment order bearing No. 746 dated 09.12.1997 as a Clerk for the said project called "Swadhar Parkalp" under the Letter-head of the Petitioner.
16.06.1999	The Respondent filed Complaint ULP No. 268 of 1999 against the Petitioner in Industrial Court, Kolhapur demanding wages as per Minimum Wages Act, 1948 and other service conditions. Hereto annexed and marked as Annexure P-2 (Page No.46, To 52) is the copy of the said Complaint (UP) No.261
13.07.1999	The Petitioner in Complaint (ULP) No. 268 of 1999 raised a preliminary issue that the Petitioner is not an "Industry" under Section 2 (1) of the Industrial Disputes Act, 1947.
31.08.2004	The Hon'ble Industrial Court, Kolhapur frame issues, including preliminary issue based on Petitioner's preliminary objections.
16.02.2008	Respondent examined herself on the preliminary issue
30.01.2008	Respondent was cross examined by petitioner.
13.08.2013	During her cross-examination, Respondent has stated in her evidence that the activites she was employed in were primarily regarding activities of the welfare of the inmates of the Petitioner. Hereto annexed and marked as

Annexure "P-6 COLLY (Page No. 67 to 69) is a copy of the evidence of Respondent in respect of the preliminary issue in the said Complaint **(ULP) No. 258/1999.**

26.03.2008 The Hon'ble Industrial Court, Kolhapur after considering the oral and documentary evidence on record answered the preliminary Issues in negative " Hereto annexed and marked as **Annexure 'P-7' (Page No. 70 to 88)**

During the pendency of the said Complaint (ULP) No. 268 of 1999, the Respondent continued to work for the said "Swadhar Prakalp" project with the Petitioner till termination.

04.01.2001 The said "Swadhar Parkalp" project was funded by SirDorabji Tata Trust, Mumbai. The said project was discontinued thereafter the trust discontinued the payment of funds. Therefore, the Petitioner was terminated the services of the Respondent by Order No. 294 dated 04.01.2001.

12.01.2001 The Respondent challenged the said termination by filing the second complaint being the Complaint (ULP) No. 11 of 2001 before the Hon'ble Labour Court, Kolhapur.

14.02.2001

The Petitioner in this Complaint (ULP) No. 11 of 2001 once again raised a preliminary issue that the Petitioner is not an Industry under Section 2 (j) of the Industrial Disputes Act, 1947 . (Annexure **'P-9' (Page No.96 to 105) and Annexure 'P- 10' (Page No. 106 to 109)** are the copies of the said written statement and the reply of the said interim application.

31.01.2002

The three judges bench referred the matter of state of U.P. Versus Jaibir Singh to larger bench and issued directions for reinstatement of the respondent with no back wages.

09.06.2008 The Petitioner adduced the same documentary evidence before the Hon'ble Labour Court, Kolhapur that the Petitioner had adduced before the Hon'ble Industrial Court, Kolhapur in the first complaint i.e. Complaint (ULP) No. 268 of 1999. Hereto annexed and marked as **Annexure 'P-11' (Page No. 110 to 115 .)** are the copies of the evidence filed in the said Complaint **(ULP) No. 11 of 2001.**

The Hon'ble Labour Court, Kolhapur came to conclusion that the Petitioner is an "Industry" under Section 2(1) the Industrial Disputes Act, 1947and therefore the case of the respondent is required to be heard on merits.

13.04.2009 Being aggrieved by the said judgment and order dated 17.12.2008 passed by the Hon'ble Labour Court, Kolhapur, the Petitioner filed Revision Application (ULP) No. 62 of 2009 under Section **44** of the MRTU & PULP

	Act, 1971 before the Industrial Court, Kolhapur. Annexure **'P-13' (Page No. 126 to 132).**
12.11.2014	The Hon'ble Industrial Court, Kolhapur by an Order dated 12.11.2014, dismissed the said revision application. **Annexure 'P-14' (Page No. 133 to 140)**
19.01.2015	Being aggrieved by the said order dated 12.11.2014, passed by the Hon'ble Industrial Court, Kolhapur, the Petitioner approached the Bombay High Court under Article 226 and Article 227 of Constitution of India **Annexure 'P-15' (Page No.141 to 154).**
30.09.2015	Hon'ble Bombay High Court passed the Impugned Order and dismissed the Writ petition on the ground that the interference on the issue of industry is unwarranted and the case should be decided on merits.
16.12.2015	Hence the present SLP was filed by the petitioner on which notice was issued and was subsequently attached with matter state of U.P. versus Jaibir Singh.

BRIEF NOTES ON "INDUSTRY"

India is a welfare state and the directive principles of state policy are incorporated in Indian constitution for welfare of public at large. The labour laws including the industrial disputes act has been enacted to protect the interest and welfare of the labourers and prevent the exploitation if any made by any of the organisation with its employees on account of social and financial disparity. The act intends for investigation and settlement of disputes between the employer and employee and a liberal interpretation is required to be given to the definition of INDUSTRY considering the welfare and benefit of the employees and to prevent their exploitation. In view of above the petitioner department may be declared as industry and the industrial disputes act is applicable to the petitioner organisation.

I. Introduction of the definition of *"Industry"*

The Industrial Disputes Act, 1947 is a comprehensive legislation that regulates the Indian labour law with respect to trade unions and individual workmen employed in any industry in the India. The Act aims to ensure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration, a The definition of Industry was under Section 2(j) of the Industrial Dispute Act, 1948 prior to Industrial Relations code, 2020.

Section 2(j)of the ID act, 1948 "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.

The scope and ambit of Industry were kept on changing through a catena of judicial pronouncement over several decades. the major issue was relating to what all comes under the meaning of the industry. The reason is that if an organization or an entity falls under the ambit of the industry then the ID Act, 1948 applies to the employees and employers of such organization. Thereby, both have a remedy under which they can raise the grievances.

The Indian legislature amended the definition of "industry" under the Industrial Disputes Act, 1947, referring to the Supreme Court's decision in Bangalore Water Supply and Sewerage Board v. Rajappa. The Amending Act 46 of 1982 proposed to redefine the term "industry" to exclude certain institutions, such as hospitals, educational institutes, and charitable organizations, from the scope of the term. The Act also excluded sovereign functions of the government. including activities related to atomic energy, space, and defense research.

The Industrial relations Code, 2020 came by repealing 3 laws. (Industrial disputes Act, 1948; the Trade Unions Act, 1926; and the Standing Orders Act, 1946 and industry was defined as under:

> "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

In view of above the legal development of industry can be classified as under

In 1953, the Supreme Court in D.N Banerji vs. P.R Mukherji, held that an organization run by the municipality constitute an industry. The Court observed by giving a wider interpretation to the later part of the definition under Sec.2(j) of ID Act, 1948 which refers to calling service, employment or industrial occupation or avocation of workmen". The definition prime facie intended to include within its scope what might not firmly be called a trade or business. Entities with Investment of capital or profit making motive does not constitute an industry.

The court in these cases interpreted the definition widely and held that the second part of the definition ("includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen") implies providing an inclusive definition.

However, the definition does not include the legal or sovereign function of the state. In the Hospital Mazdoor Sabha case, it was held that the hospital was an industry.

i. Between 1963 And 1978 In 1963, the Supreme Court in the **University of Delhi vs. Ram Nath** had reversed the above trend by interpreting the definition of industry narrowly thereby holding that Delhi University cannot be considered an industry.

Subsequently, in the years 1967 and 1969 in the case of Madras **Gymkhana Club Employees' Union vs. Management of Gymkkhana Club & Cricket Club of India vs. Bombay Labour Union** respectively held that the clubs' having membership was not an industry.

In 1970, in the case of **Management of Safdarjung Hospital v/s. Kuldip Singh Sethi,** . In this case, the issue arises "whether a firm of solicitors constitutes an industry?". And it was held that the essential basis of industrial disputes is that the dispute must arise between capitalist and labour in enterprises was capitalist and labour combine to produce commodities or provide service.

It was clarified that a person following a liberal profession does not carry on his profession in any intelligible sense without the active cooperation of his employees and the principal, if not sole, capital which he brings into his profession is his special or intellectual & educational equipment. Therefore, a profession like that of an attorney/lawyer/solicitor must be considered to be outside the definition of industry.

Case of Bangalore Water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.

1. In 1978, in the Landmark case of Bangalore Water Supply and Sewerage Board v. A. Rajappa The the constitution bench has given liberal interpretation to the word industry and held that hospitals, clubs, and educational institutions, research and

charitable institutions as industries and this was ruled out in the ratio of 3:2 of Hon'ble judges.

It overruled its earlier decisions given in the cases of Safdarjung Hospital vs. K.S Sethi AIR 1970 SC 1407. National Union of commercial Employees vs. M.R Meher AIR 1962 SC 1080, University of Delhi v. Ram Nath AIR 1963 SC 1873.

Madras Gymkhana club employees vs. Management of Gymkhana club AIR 1968 SC 554. and cricket club of India vs. Bombay Labour Union AIR 1969 SC 276.

III. **Brief Background and history of legal development of the definition of history by Hon'ble Supreme court through judicial pronouncements.**

Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, 1958 SCC OnLine SC 4

1. The majority, led by Justice S.K. Das, interpreted the definition of "industrial dispute." The term "any person" in the definition was deemed not to encompass all individuals but those with a direct or substantial interest related to employment, non-employment, terms, or conditions of labor. The Court rejected a broad interpretation.

2. Justice A.K. Sarkar dissented, advocating for a broader interpretation of "any person," holding that the legislature's use indicated a wider scope. He emphasized that disputes involving non-workmen might still qualify as industrial disputes, contingent on workmen's interest.

3. The majority decision dismissed the appeal, stating that Dr. Banerjee was not a 'workman,' and the dispute did not qualify as an industrial dispute.

Western India Automobile Association v. Industrial Tribunal, Bombay,

1949 SCC Online FC 12

1. That a dispute in regard to the reinstatement of a dismissed employee is a dispute "connected with the employment or non-employment of a person" and is therefore an "industrial dispute" within the meaning of s. 2, cl. (k), of the Industrial Disputes Act, 1947.

2. that the definition of the term "employer" in s. 2, cl. (g), of the said Act is not

exhaustive or inclusive and does not limit the application of the Act to undertakings carried on by the Central or Provincial Government or a local authority. The Act applies also to industries carried on by private individuals and associations.

D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619

1. The Act defines "industry" and "industrial dispute" as any business, trade, undertaking, manufacture, or calling of employers, including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" refers to any undertaking where capital and labor cooperate to produce wealth in the form of goods, machines, and tools, and for making profits. The concept of industry extends to various fields of activity, such as agriculture, horticulture, and pisciculture. However, the limited concept of "industry" in early times must now be expanded to include various forms of industry, allowing for quick settlement of disputes without disorganizing society's needs. The conflicts between capital and labour must be determined more from the standpoint of status than contract, and civilized governments have considered the use of conciliation officers, boards, and tribunals for effective dispute settlement.

2. The meaning of "industry" and "industrial dispute" in a modern society, where disputes were not isolated but rather a result of a continuous process of social evolution. It emphasizes the need for legislation to address the significant problems that arise in the industrial field, ensuring that society remains adaptable and responsive to changing circumstances.

State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44

1. In this case respondents 2 and 3, who were ward servants at J. J. Group Of Hospital in Bombay under state control, were retrenched without compensation, violating S. 25F(b) of the Industrial Disputes Act, 1947. They sought a writ of mandamus from the High Court, but the single judge dismissed it, stating that non-payment of compensation didn't invalidate retrenchment as S. 25I provided a remedy for recovery.

2. On appeal, the Division Bench overturned the decision, affirming that the hospitals were industries, and non-payment of compensation rendered retrenchment unlawful.

3. This Hon'ble court held that the doctrine of quid pro quo (profit motive) wasn't crucial in determining whether an activity qualifies as an industry.

Corpn. of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45

1. The question was whether the municipal activities of the Corporation of Nagpur City fell within the definition of 'industry' as per the C.P. and Berar Industrial Disputes Settlement Act, 1947. Disputes arose between the Corporation and its employees, and the State Government referred them to the State Industrial Court. The Industrial Court ruled that the Corporation and most of its departments were covered by the definition of 'industry. The High Court rejected the contention.

2. The supreme court held that the real test, according to the court, was whether a service undertaken by a corporation would be considered an industry if performed by an individual or a private person. The court rejected the notion that only activities analogous to trade or business could be industries. It affirmed that if a service rendered by a corporation qualified as an industry, the employees of the departments connected with that service were entitled to the benefits of the Act.

3. The court also ruled that if a municipal department discharged multiple functions, some falling within and some outside the definition of industry, the predominant functions of the department would be the criterion for the purposes of the Act.

University of Delhi v. Ram Nath, 1963 SCC Online SC 117

1. The University of Delhi and Miranda House (a college affiliated with the University) were found not to constitute an "industry" under the Industrial Disputes Act, 1947.

2. The Tribunal rejected the appellants' contention and awarded retrenchment compensation to the respondents

3. The Supreme Court held that the work of education, especially in institutions like the University of Delhi, is primarily carried out with the assistance of teachers. Considering the exclusion of the whole class of teachers from the definition in Section 2(s), the court concluded that it could not have been the policy of the Act to treat education as an industry, particularly for the benefit of a minor and insignificant number of subordinate staff.

Cricket Club of India Ltd. v. Bombay Labour Union, (1969) 1 SCR 600.

1. The court pointed out that the income earned by the club, such as rents from immovable properties, was not attributable to the aid and cooperation of employees. The facilities provided, including residential accommodation and catering were primarily for the club members and not in the nature of running a hotel or systematic business for profit.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 (7 Judge bench)

1. 'Industry', as defined in Section 2(1) and explained in Banerji (supra), has a wide import.

    a. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an 'industry' in that enterprise.

    b. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

    c. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

    d. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

2. The court suggested that an industry cannot be strictly defined but can only be described, but this may leave room for speculation and subjective notions. The phrase 'analogous to industry' in the Safdarjung Hospital case (supra) could not cut down the scope of "industry," and the decisions must be overruled. The term 'analogous to trade or business' should only mean activities that result in goods or services that can be converted into saleable ones, and the possibility of making them marketable should determine whether an activity falls within the domain of industry.

Coir Board Ernakulam Kerela state vs. Indira Deval P.S, (2000) 1 SCC 224

1. Philanthropic activities, such as charitable hospitals providing free medical

services and medicines, are essential for community service. These organizations may be sustained by free services, donations, or profits from paid activities. Doctors working in these hospitals may work for nominal fees. However, the definition of philanthropic organizations needs re-examination to ensure the community benefits from these vital services. Other activities include educational services, research, professional activities, recreational sports, arts promotion, and crafts.

IV. Analysis of Industry by the Hon'ble Supreme court through various judicial pronouncements holds following not to be industry

i. 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.
ii. educational, scientific, research or training institutions; or
iii. institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or
iv. khadi or village industries; or hospitals or dispensaries
v. 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
vi. Any domestic service; or
vii. 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
viii. any activity, being an activity carried on by a cooperative 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;

In 2000, the three-judge bench of the Supreme Court in the case of Coir Board Ernakulam Kerela state vs. Indira Devai P.S[10] stated that the judgement delivered by a seven-judge bench in the Bangalore water supply case does not in our opinion, require any reconsideration.

In 2005, the majority opinion by the Supreme Court in State of U.P vs. Jai Bir Singh[11], expressed the view that interpretation was only tentative and temporary till

the legislature stepped in and removed vagueness and confusion.

The issue of interpretation of industry was placed before the 3 judges bench on 09-11-2001 and was further listed for hearing before 5 judges bench vide order dated 05-05-2005.

The three judges bench vide order dated 31-1-2002 , in the matter of state of up versus Jaibir Singh referred the matter regarding the question of interpretation of industry to the larger bench.

ORDER DATED 05-05-2005 State of U.P. V. Jaibir Singh (2005) 5 SCC 1

The 5 judge bench of the apex court in the present case were of the view that there should be a middle way between literal and liberal interpretation of unamended definition of industry and were of opinion that there is a need for a larger bench which would have to necessarily go into all necessary legal questions in all dimensions and depth. The court, thus, held that a larger bench should be referred for review of decision in Bangalore Water Supply case and interalia consider all the grounds.

The court also emphasized on the need of reconsidering where the line should be drawn in recognition of an establishment as an industry and what limitations should be reasonably applied while interpreting the wide words under section 2 (j) of the act. The court thus recognized that although it would be difficult problem to resolve, the pressing demands of competing sectors of employers and employees and the dormant attitude of legislature and executive in bringing into force amended definition with required changes, have compelled this constitutional bench to make present reference for constitution of suitable larger bench for reconsideration of Bangalore Water Supply case decision and clarify on required points.

The constitution bench comprising of 5 judges vide order dated 05-05-2005 in the matter of state of up versus jaibir singh reported in (2005) 5 SCC 1 referred the matter to the larger bench to reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt it is a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book, the bench found that keeping in view

the amended definition of 'industry' kept dormant for long 23 years by the legislature and executive, . Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act ,the issue of industry was required to be referred to the larger bench.

ORDER DATED 02-01-2017 State of U.P. V. Jaibir Singh

The learned seven judges bench of this Hon'ble court considering the reference order passed by a Five-Judges Bench of the Court pursuant to which the matters involving the question of industry and considering the contentions of the parties referred the matter to the larger bench that is 9 Hon'ble judges vide order dated 02-01-2017.

Conclusion:

The definition of industry had evolved over decades and the reason was that there was so much discussion regarding the definition because the scope and ambit of the definition will make many changes in the arena of labour laws since it is taken certain organizations and some it excluded. However, the present IR code, 2020 has been well-drafted by the legislature in such a way that it caters for the present-day needs through its comprehensive and accessible nature of legislature

In view of above submissions, it is most respectfully prayed that Your Lordships may graciously be pleased to dismiss the Petition Filed by the Petitioner and interpret the definition of industry accordingly in the interest of workmen.

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339

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) No.14156 OF 2021

IN THE MATTER OF:

M/S SHREE GOPAL KRISHNA
GOSALA, CUTTACK ..... PETITIONER

VERSUS

ASHOK KUMAR BEHERA ..... RESPONDENT

I N D E X

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DATE: 26.12.2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) No.14156 OF 2021

IN THE MATTER OF:

M/S SHREE GOPAL KRISHNA
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VERSUS

ASHOK KUMAR BEHERA ..... RESPONDENT

WRITTEN NOTE OF ARGUMENTS ON BEHALF OF THE RESPONDENT

MOST RESPECTFULLY SHOWETH:

1. That in the present Petition impugned judgement and final order dated 22.07.2021 passed by the Hon'ble High Court of Orissa at Cuttack in W.P (C) No. 25028 of 2011 has been challenged, wherein the Hon'ble High Court while concurring with the findings of the Learned Labour Court dismissed the petition filed by the petitioner rightly held the Petitioner organization to be an Industry under section 2(j) of the Industrial Disputes Act, 1947.
2. The brief facts of the present case is that the Respondent was appointed as a Grass Cutter in the Petitioner-Institution i.e., M/s Shree Gopala Krishna Gosala in July, 2001 and continued as such. The Respondent / workmen being a grass cutter was getting a paltry amount of wages which is much less than the minimum wages all through. He submitted a claim before the District Labour Officer alleging refusal of employment to him by the Petitioner concerning different periods. So, on the request of Respondent the Industrial dispute was referred for adjudication. The learned Labour Court vide its final order and judgement dated 02.07.2011 held the Petitioner organization to

be an Industry under section 2(j) of the Act which was also confirmed by the Hon'ble High Court.

3. It is submitted that the learned Labour Court vide its final order and judgement dated 02.07.2011 has rightly held the Petitioner organization M/s Shree Gopala Krishna Gosala Cuttack to be an Industry under section 2(j) of the Industrial Disputes Act, 1947. It is further submitted that it is admitted position on record that the Petitioner is earning sizable profits by selling milk products just like a commercial Diary and deliberately avoiding to protect the rights of workmen as required under the statutory laws and is avoiding compliances of other related statutory Acts applicable on commercial establishments like Minimum Wages Act 1948, Workmen Compensation Act 1923 and Industrial Disputes Act 1947.
4. It is submitted that Learned Labour Court has considered in detail and held that the Petitioner organization is an Industry under the Act earning profits by selling milk products and having more than 100 employees working under the organization getting salary from the Petitioner organization.
5. It is submitted that the Hon'ble High Court also correctly held in view of the judgement of this Hon'ble Court in the case of *Banglore Water Supply and Sewerage Board versus A. Rajappa reported in (1978) 2 SCC 213* that the Petitioner institution is an industry under the Industrial Disputes Act. It is submitted that the learned Labour Court as well as the Hon'ble High Court has correctly appreciated that the Petitioner institution is engaged in selling milk, milk products and other allied products including vermicompost and cow dung and the payment of regular salary to the workmen as well as

maintenance of register in that respect is not disputed and therefore the Petitioner institution is an industry under the Act.

6. That it is respectfully submit here that the judgement of the Division Bench in W.P (C) No. 25028 of 2011 at para 12 it has been well discussed about the definition of industry which has been decided in para 140 of Banerjee Vs. Mukherjee AIR (1953) SC 58 and has been upheld in Bangalore water supply & sewerage Board Vs. A. Rajappa & Others. Besides that, in the case of Union of India Vs. Shree Gajanan Maharaj Sansthan reported in (2002) 5 SCC 44 it has been decided that the very amendment in the year 1982 where in the charitable Organization has been excluded from the term industry and the said amendment has not been brought in to force. Thus, the definition of the term industry as it stood prior to the amendment is still applicable to the employees.
7. It is submitted that the Petitioner contention of not being an industry and being a charitable institution is camouflage to defeat the rights of the workmen working under its institution and also not follow the statutory compliances of the law as applicable on the institution. In the instant case the Petitioner organization is running a profitable institution under the garb of registration of the same as a charitable institution under the Income Tax Authorities only to play fraud upon the government to avoid compliances of the statutory laws applicable to industry under the law.
8. It is submitted that the present matter is totally different to the cases referred to the larger bench and there is no substantial question of law raised in the present Special Leave Petition to justify the interference by this Hon’ble Court under Article 136 of the Constitution of India.

9. It is submitted that the present matter does not require to be referred to larger bench and the instant case is different to the matter referred in the case of State of U.P versus Jai Bir Singh reported in 2005 (5) SCC 1. It is submitted that the present case is a case where the Petitioner has got himself registered as a Charitable institution under the Income Tax Act while earning profit by systematic engaging in an activity of producing and selling milk products and hence has been rightly held to be an industry by the Hon'ble High Court relying on Para 180 and Para 140 of the judgement in the case of Bangalore Water Supply & Sewerage Board versus A. Rajappa reported in 1978 (2) SCC 213.

10. In view of the above facts and contention raised it is evident that the Learned Labour Court as well as the Hon'ble High Court rightly held the Petitioner organization to be an Industry under section 2(j) of the Industrial Disputes Act, 1947. So, in the peculiar facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to dismiss instant SLP filed by the Petitioner with exemplary costs.

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