

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

State of Uttar Pradesh

...Appellant

Versus

Jai Bir Singh

...Respondent

AND IN THE MATTER OF:

CIVIL APPEAL NO. 3119 OF 2011

Central Council for Research
in Ayurvedic Sciences

...Appellant

Versus

Brijesh Kumar Sharma

...Respondent

AND

SPECIAL LEAVE PETITION (C) NO. 20982 OF 2002

Workmen, Represented Through,
The Secretary, Anusandhan Mazdoor Union, Hazaribagh

...Appellant

Versus

Central Rainfed Upland, Rice Research
Station, Hazaribagh

...Respondent

INDEX

S.No.	Particular	Page No.
1.	Written Submissions on behalf of Mr. Saket Sikri, Advocate, on behalf of Central Council For Research in Ayurvedic Sciences, Indian Council of Agricultural Research, Indian Council for Medical Research	

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WRITTEN SUBMISSIONS ON BEHALF OF MR. SAKET SIKRI, ADVOCATE, ON
BEHALF OF CENTRAL COUNCIL FOR RESEARCH IN AYURVEDIC
SCIENCES, INDIAN COUNCIL OF AGRICULTURAL RESEARCH, INDIAN
COUNCIL FOR MEDICAL RESEARCH

1. It is most respectfully submitted that two prominent research organizations under the Government of India namely, Central Council for Research in Ayurvedic Sciences ('CCRAS') and Indian Council of Agricultural Research ('ICAR'), have two petitions pending before this Hon'ble Bench, which are tagged with the reference order (*State of Uttar Pradesh v. Jai Bir Singh (2005) 5 SCC 1*), being Civil Appeal No. 3119 of 2011 titled 'Central Council for Research in Ayurvedic Sciences v. Brijesh Kumar Sharma' and S.L.P.(C) No. 20982 of 2002 titled 'Workmen, Represented through The Secretary, Anusandhan Mazdoor Union, Hazaribagh v. Central Rainfed Upland, Rice Research Station, Hazaribagh'.
2. It is further submitted that there is another research organization namely, **Indian Council for Medical Research ('ICMR')**, which also has a similar issue as above *albiet* the matter is not tagged with the reference order. However, the aspect with respect to the status of research organizations to be considered as 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act,

1947 ('the Act'), and its wide interpretation in the judgment of *Bangalore Water Supply & Sewerage Board v. A. Rajappa and Other (1978) 2 SCC 213* ('Bangalore Water Supply') (@ pg. 2062, Vol-V) is germane to the present reference with regards to the status of these research organizations. Section 2 (j) of the Act provides as under:

(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. This Hon'ble Court in the judgment of Bangalore Water Supply, specifically includes research organizations while interpreting the definition of industry under 2(j) of the Act. Para 112 and 113 (@ pg. 2134, Vol-V) is relevant in this regard:

"112. We may proceed to consider the applicability of Sec. 2(j) to institutions whose objectives and activities cover the research field in a significant way. This has been the bone of contention in a few cases in the past and in one of the appeals argued at considerable length and with considerable force by Shri Tarkunde who has presented a panoramic view of the entire subject in his detailed submissions. An earlier decision of this Court, The Ahmedabad Textile Industries Research Association case has taken the view that even research institutes are roped in by the definition but later judicial thinking at the High Court and Supreme Court levels has leaned more in favour of exemption where profit-motive has been absent. The Kurji Holy Family Hospital was held not to be an industry because it was a non-profit-making body and its work was in the nature of training, research and treatment. Likewise in *Dhanrajgirji Hospital v. Workmen*, a bench of this Court held that the charitable trust which ran a hospital and served research purposes and training of nurses was not an industry. The High Courts of Madras and Kerala have also held that research institutes such as the Pasteur Institute, the C.S.I.R. and the Central Plantation Crops Research Institute are not industries. The basic decision which has gone against the Ahmedabad Textile case is the *Safdarjung* case. We may briefly examine the rival view-points, although in substance we have already stated the correct principle. The view that commends itself to us is plainly in reversal of the ratio of *Safdarjung* which has been wrongly decided, if we may say so with great respect.

113. Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. ***Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries.*** 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 Organisation, propelled by systematic activity, modelled on co-operation 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.

- 3.1 It is respectfully submitted that this Hon'ble Court in para 112 of Bangalore Water Supply, notes that in *The Ahmedabad Textile Industry's Research Association v. State of Bombay (1961) 2 SCR 489* this Hon'ble Court included research organizations within the definition of *industry*, however the departure took place in *Management of Safdarjung Hospital New Delhi v. Kuldip Singh Sethi (1970) 1 SCC 735*, as in *Safdarjung Hospital*, the definition under Section 2 (j) was interpreted to mean any activity which is analogous to trade and business.
- 3.2 This Hon'ble Court further in para 113, with respect, construes research to have direct convergence with industrial growth, which leads to generation of wealth. The concept of research and research organizations was circumscribed to aid industrial growth and wealth creation. It was held that discoveries are valuable contributions to the wealth of the nation, which are sold for a heavy price. There is nothing more valuable in today's scientific and technological age, as intangible goods and invaluable services, than discoveries.
- 3.3 The concept of research as carried out by organizations before this Hon'ble Court namely CCRAS, ICAR and ICMR, were, with great respect, not considered in the judgment of *Bangalore Water Supply*.
- 3.4 The research institutions before this Hon'ble Court have been established by the Government of India, in discharge of its constitutional obligation under Part IV of the Constitution of India, being Directive Principles of State Policy i.e., CCRAS and ICMR have been set up to discharge obligations under Article 47, namely to improve public health and raise the level of nutrition, whereas, ICAR has been setup to discharge obligations under Article 48, which is to organize agriculture and animal husbandry on modern and scientific lines. Under the umbrella of these organizations, various institutes and organizations have been run for years, for public health, development of agriculture and food security of the nation. The functions performed by the aforesaid organizations are purely in discharge of state's constitutional obligations and are therefore, purely sovereign functions, which cannot be termed as industry. Such activities do not have any inherent commercial interest, and any revenue generation is incidental to discharge of such constitutional obligations. It is pertinent to bring to the notice of this Hon'ble Court that the revenue so generated is further invested for purposes of research.
- 3.5 **Central Council for Research in Ayurvedic Sciences** has been established "*To formulate aims and patterns of research on scientific lines in Ayurvedic Sciences*", with the objectives being:
 - a) To undertake any research or other related programs in ayurvedic sciences.
 - b) To promote the propagation of knowledge and experimental measures generally in connection with the causation, mode of spread, and prevention of diseases.
 - c) To initiate, aid, develop and coordinate scientific research in different aspects, fundamental and applied aspects of Ayurvedic Sciences
 - d) To provide technical and financial support for research for the furtherance of objectives of the Central Council.

It runs 30 peripheral research institutes.

3.6 Similarly **Indian Council Agricultural Research's** objects include:

- a) To undertake, aid, promote, and co-ordinate agricultural and animal husbandry education, research
- b) To act as a clearing house of information not only in regard to research but also in regard to agricultural and veterinary matters generally.

It currently comprises 113 ICAR institutes.

3.7 Also, **Indian Council of Medical Research's** objective as per its Memorandum of Association, i.e., Clause 2 (ii), are as follows:

"The prosecution and assistance of bio-medical research, the propagation of (registered under the provisions of the Societies Act XXI of 1860) on its dissolution, or such part thereof as can be taken over by ICMR as also to takeover and manage the assets or any parts of the assets of any other organization having objects similar to those of ICMR. knowledge and experimental measures in connection with -

- a) *Causation, mode of spread and prevention of Communicable Diseases;*
- b) *Non-communicable Diseases;*
- c) *Basic Medicine Sciences;*
- d) *Traditional Medicine;*
- e) *Problems of urban health;*
- f) *Nutritional problems;*
- g) *Reproductive and Child health issues;*
- h) *Public-health***
- i) *Bio-informatics;*
- j) *Bio-medical Ethics"*

ICMR runs 26 National Institutes and over 1000 research projects.

4. The triple test laid down in the judgment of *Bangalore Water Supply* (Para 140-144) (@ pg. 2147, Vol-V) is as under:

- a. Systematic activity
- b. Co-operation between employer and employee
- c. For production and/or distribution of goods and services calculated to satisfy human wants and wishes

4.1 It is respectfully submitted that the research organizations referred to hereinabove, with respect, do not have any correlation to the third part of the test laid down above, as none of the activities performed by these organizations are or have any correlation to the production and / or distribution of goods and services to satisfy human wants and wishes.

4.2 Further, the activities carried out by the above organizations are in no way analogous to trade and business.

4.3 This Hon'ble Court in *Physical Research Laboratory v. K.G. Sharma*, (1997) 4 SCC 25 (Para 12-13) (@ pg. 3723 / 3733, Vol-V), held that a research organization cannot be treated as an undertaking analogous to business trade, it is not engaged in commercial industrial activities and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy

wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise.

5. It is most respectfully submitted that the judgment in *Bangalore Water Supply*, viewed the definition of industry purely from the perspective of the relationship between employer and employee and not from the perspective of an enterprise or an undertaking conducting an activity being analogous to trade and business.

5.1 It is respectfully submitted that the third part of the triple test may include the test as laid down in *Safdarjung Hospital*, i.e., activity in question being analogous to trade or business. In *Safdarjung Hospital* (@ pg. 450, Vol-V), it was noted that the word business is also of wide import but considering the collocation of the terms and their definition, the terms have a definitive economic content of a particular type. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods or wealth and material services. (Para 17) (@ pg. 457, Vol-V)

6. In *State of UP v. Jai Bir Singh 2005 5 SCC 1* (@ pg. 4320, Vol-V), the Hon'ble Court (para 38 @ pg. 4351, Vol-V) held while *Bangalore Water Supply* exempts only such sovereign functions outside the purview of industry which can be termed strictly as constitutional functions of the three wings of the state, however, it is to be noted that the concept of sovereignty in a constitutional democracy is different in a democracy from the traditional concepts of law and order, defence, law making and justice dispensation. In a democracy governed by the Constitution, the state is obliged to discharge its constitutional obligations contained in directive principles of state policy and such activities should be treated as discharge of sovereign functions falling outside the purview of industry. It was stated as under:

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

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

6.1 The research mission of these organizations are linked to sovereign government functions. As stated above, the public health research carried out by such research organizations are typically linked to states constitutional obligation under Articles 47 and 48. These are government funded autonomous bodies which are discharging their functions in aid of Directive Principle of State Policies.


47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

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