

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6114 OF 2001**

**IN THE MATTER OF:**

Executive Engineer & Anr.

...Appellant

Versus

Uma Kant

...Respondent

**AND**

**CIVIL APPEAL NO. 8597 OF 2001**

**IN THE MATTER OF:**

Ram Ji Singh And Ors.

...Appellants

Versus

State Of Uttar Pradesh And Ors.

...Respondents

**AND**

**CIVIL APPEAL NO. 3920 OF 2010**

**IN THE MATTER OF:**

State Of U.P. & Anr.

...Appellants

Versus

Ramji Singh & Ors.

...Respondents

**AND**

**CIVIL APPEAL NO. 1131 OF 2012**

**IN THE MATTER OF:**

Santosh Kumar

...Appellant

Versus

State Of U.P. & Ors.

...Respondents

**WRITTEN SUBMISSION OF MR. RAVINDRA KUMAR  
RAIZADA, SENIOR ADVOCATE, ON BEHALF OF STATE  
OF UTTAR PRADESH**

**ADVOCATE FOR STATE OF UTTAR PRADESH: KAMLENDRA MISHRA**

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**WRITTEN SUBMISSIONS ON BEHALF OF STATE OF UTTAR PRADESH**

01. This Hon'ble Court's formulation in Para 140 and 141 of Bangalore Water Supply stands in direct tension with *D.N. Banerjee v. P.R. Mukherjee and Others*, (1952) 2 SCC 619 i.e., the very decisions it purports to follow. In *Banerji* (supra), the Hon'ble Court had expressly refused to apply the principle of *noscitur a sociis* to cut down the meaning of "undertaking". There, it rejected the argument that "undertaking," wedged between "business" and "trade," should take its colour from those neighbours and be read as only a business or trade undertaking. The whole underpinning of that interpretive exercise was to liberate "undertaking" from the gravitational pull of "trade" and "business." Yet Para 141(a) of *Bangalore Water Supply* (supra) reintroduces precisely that associational shrinkage, directing that "undertaking" must suffer "contextual and associational shrinkage" which is *noscitur a sociis* by another name. The Hon'ble Court thus applies, in its conclusion, the canon of construction that Banerji had expressly declined to apply,

without acknowledging the contradiction. Corporation of Nagpur reinforced this position as it too declined to apply *noscitur a sociis* to the definition, insisting that the words of the definition must each be given their independent and full meaning rather than being coloured by their neighbours. It is respectfully submitted that in *D.N. Banerjee v. P.R. Mukherjee and Others*, (1952) 2 SCC 619, the Hon'ble Court's interpretations of the expression "undertaking" in Paragraph 17 sits in a very uncomfortable contradiction with the conclusion at Paragraph 26 of the said judgment. At the stage of interpretation, the Hon'ble Court invoked the surplusage canon and reasoned that since "undertaking" appears independently alongside "business" and "trade" in the definition, it must carry a meaning wider than, and distinct from, a mere trade or business venture; and that the Legislature had "apparently intended to include within its scope what might not strictly be called a trade or business venture." However, when the Hon'ble Court turned to apply this construction to the facts and the question directly before it i.e., whether a Municipality in discharging its normal duties connected with local self-government is engaged in an "industry" or not (See Paragraph No. 6 of the *D.N. Banerjee* (supra)), it predicated the applicability of the Act upon whether the disputed branch of work could be said to be "analogous to the carrying out of a trade or business" and thereby reintroducing the very trade-or-business standard it had not accepted at the stage of interpretation.

02. In *Bangalore Water Supply* (supra), the Hon'ble Court began its analysis of *D.N. Banerjee* at Paragraph No. 25 of the Judgment. The Hon'ble Court begins its analysis of *Banerjee* (supra) by quoting Paragraph 17 of the latter, which holds that the meaning of the word "undertaking" means something other than a business or trade undertaking. On this basis, the Hon'ble Court notes that the term "industry" overflows trade and business.

The Hon'ble Court then moves to discuss the criteria which are not imperative in defining the term "industry". First, the Hon'ble Court holds that capital is not an essential requirement for an activity performed by an organisation to be an industry (Para 31). This observation informs the Hon'ble Court's conclusion that functions of a municipal corporation such as supply of power and light to inhabitants of a municipality by levying taxes also qualifies as an industry. It further holds that profit motive is not a *sine qua non* of "industry" functionally or definitionally. On this basis, the Hon'ble Court concluded that charitable undertaking may also be an industry (Para 31, 32, 34 and 35).

The Hon'ble Court then goes to discuss the meaning of the phrase "analogous to trade or business" used in the *Banerji* (supra). The Hon'ble Court in *Bangalore Water Supply* (supra) essentially acknowledges in Para 37 that "analogous to trade or business" does "cut down" undertaking but then in Para 38 removes itself from that limitation by redefining "analogous" so expansively (focusing on *modus operandi* in the working i.e., in the carrying of economic venture like trade or business and employer–employee relations) that the test becomes extremely wide. The Hon'ble Court held that in "carrying out" the analogy is in the *modus operandi*, the method of conducting the work including the relation between labour and management, and not in profit motive, not in what is done with the proceeds. It

is respectfully submitted that the above description fits virtually every organised human activity known to law such as a court registry, a legislature's secretariat, a temple management committee, a prison, an army canteen. There is nothing distinctively analogous to trade or business in any of this. What the Hon'ble Court has identified are simply the universal features of any employer-employee relationship, which exist wherever one person employs another for any purpose whatsoever. The word "analogous" was always meant to do the filtering work. By replacing that filter with the bare fact of organised employment, the Hon'ble Court has not interpreted the expression "analogous to trade or business" but has substituted an altogether different test in its place i.e., "any organised activity employing labour." In simple words, analogy to trade or business has not been expanded, it has been dissolved.

03. In Paragraph No. 47, the Hon'ble Court starts to discuss the law laid down in *Corpn. of the City of Nagpur v. Employees*, 1960 SCC OnLine SC 45. The Hon'ble Court first acknowledges that there the Hon'ble Court took the view that the words used in the definition of "industry" were *prima facie* of the widest import and declined to curtail the width of meaning by invocation of *noscitur a sociis*.
04. In its analysis of Corporation of Nagpur (*supra*), the Hon'ble Court in Bangalore Water Supply (Para Nos. 47, 52, 62, 63 and 64) notes that Corporation of Nagpur emphasized that the "analogous to trade or business" test falls not on equating other activities with trade or business, but on identifying whether they share the nature of organised activity implicit in trade or business. It is submitted that this interpretation opened the door to municipal and non-commercial activities being brought within the definition without the awkward fiction of calling them trade. The pith and substance of the matter, the Hon'ble Court holds, lies in the structural and relational aspects of the enterprise, namely wages, service conditions, the method of employment, and the characteristic business methods of running the venture, entirely divorced from profit motive or the quid pro quo theory. The Hon'ble Court also holds that if a service rendered by a private individual would constitute industry, it is equally industry when rendered by a corporation or public body, thereby closing the door on any argument that the public sector or philanthropic character of an employer can, by itself, take an activity outside the Act. The *raison d'être* of industrial law, the Hon'ble Court concludes, is the human sector, the way employer-employee relations are set up and processed, and it is this relation rather than the sector, the motive, or the ownership of the enterprise, that industrial law exists to govern.
05. Still further, the test that *Corporation of Nagpur* (*supra*) formulated and *Bangalore Water Supply* (*supra*) adopted that an activity is "industry" if it shares the nature of organised activity implicit in trade or business, with the decisive criterion being the employer-employee relationship and the methodology of organising that relationship is on close examination, no test at all. A test, by definition, must be capable of excluding something. It must have a boundary. The *Corporation of Nagpur* (*supra*) and *Bangalore Water Supply* (*supra*) test fails this basic requirement entirely, because the feature it treats as decisive i.e.,

the organised cooperation between employer and employee, expressed through wages, service conditions, and a structured employment relationship is present in virtually every organised human activity without exception. None of these are trade or business, and none of them bear any meaningful analogy to trade or business in their essential character, purpose, or function. Yet every one of them would satisfy the test as formulated. The test, therefore, does not identify what is analogous to trade or business it identifies what is organised employment, which is an altogether different and far wider category. By treating this universal feature of employment as an analogy to trade or business, the Hon'ble Court has created a test that is, in truth, saying the same thing twice over: any organised activity with employees is industry because any organised activity with employees resembles the organised activity with employees that one finds in trade or business. The analogy has consumed itself, and the word "analogous" has been rendered superfluous entirely without any work to do.

06. The "includes" clause in the second limb of Section 2(j) which brings within the definition of "industry" any "calling, service, employment, handicraft, or industrial occupation or avocation of workmen" does not, on a proper reading, operate as a word of enlargement expanding the reach of "undertaking" in the first limb, as was assumed in *Banerjee* (supra). As clarified in *N.D.P. Namboodripad v. Union of India*, (2007) 4 SCC 502, the word "includes" is not invariably a word of extension; in a given context it may equally mean "consists of" or "comprises," thereby performing a defining rather than an expanding function. Read in this sense, the second limb of Section 2(j) does not add new territory to the first limb or widen the scope of "undertaking" beyond its natural meaning. Instead, it simply describes, from the standpoint of the workman, what the first limb already encompasses from the standpoint of the employer. The two limbs are complementary faces of the same definition, not a base and an extension. The "includes" clause, therefore, cannot be pressed into service to argue that "industry" reaches activities which would not otherwise qualify as an undertaking, trade, business, manufacture, or calling of employers for "includes" here means "consists of," and what it consists of must be read in light of, and not in derogation of, the first limb of the definition.

Drawn By:



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