

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE UJJAL BHUYAN
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA
HON'BLE MR. JUSTICE JOYMALYA BAGCHI
HON'BLE MR. JUSTICE ALOK ARADHE
HON'BLE MR. JUSTICE VIPUL M. PANCHOLI

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 897/2002

STATE OF U.P.

Petitioner(s)

VERSUS

JAI BIR SINGH

Respondent(s)

TRANSCRIPT OF HEARING

17-March-2026

Document Control

Document Name & Date	Transcript of Civil Appeal No. 897 of 2002 Hearing dated 17.03.2026
Status	Released
Version	1.0
Last Update	17.03.2026
Nature of Update	Original version
Release Date	17.03.2026
Document Owner	Supreme Court of India

10:30 AM IST

1 **CHANDER UDAY SINGH:** My Lord, may I?

2 **CJI SURYA KANT:** We will commence from Petitioner's side?

3 **R. VENKATARAMANI:** There are four petitions where I find Union of India is a party, but
4 I would rather prefer to say that as I am addressing the court as Attorney General, rather than
5 appearing for any particular party, even though I may have some shades of views which may
6 try to support a point of view which Petitioners have presented. So, these are five cases where
7 I find Union as a Party. In the Cause List there's 18, 27, 33, 35 and 36.

8 **CHANDER UDAY SINGH:** May I seek Your Lordship's permission just to say two words,
9 with kind... If my learned Attorney could permit me. There was one aspect, which may not
10 have engaged Your Lordship's attention, that though the Code had been brought into force on
11 21st November 2025, the two laws are running in tandem and parallel. But on 2nd February,
12 2026, a notification came to be issued, formally repealing the Industrial Disputes Act, the
13 Trade Unions Act and the Industrial Employment Standing Orders Act. My Lords may not...
14 I'm not sure whether...

15 **CJI SURYA KANT:** These are not formally on record.

16 **CHANDER UDAY SINGH:** So there's a formal repeal. So now we are considering...

17 **CJI SURYA KANT:** 20 Act... 104 section of 2020, the new Act, said these acts shall be
18 repealed.

19 **CHANDER UDAY SINGH:** Yes.

20 **CJI SURYA KANT:** Shall be repealed by issuing separate notification.

21 **CHANDER UDAY SINGH:** Yes, but that had somehow escaped their attention, so two
22 notifications were issued on 21st November and 8th December, but both of them, they had not
23 executed the formal repeal; that comes on 2nd February. So today, the situation is that, now
24 the Section completely repealed, and now there's a Section 6 of the General Clauses Act and
25 104 of that governs the thing. So we are really only on the pipeline matters now, which are...
26 which might be in the pipeline under repealed statute.

27 **CJI SURYA KANT:** Pipeline or pending before different...

28 **CHANDER UDAY SINGH:** In that sense, pipeline which are pending before Your
29 Lordships, or pending in some High Court. But the definition which we are considering here,
30 no longer exists; and the new definition now has formally taken over, it's not running in

1 tandem or parallel anymore. If I can just place those notifications, if it is of assistance, Your
2 Lordship.

3 **CJI SURYA KANT:** This must keeping in mind this aspect, the subsequent events and the
4 new legislation. That's why on 16th February, '26, the day when we kept it for directions, and
5 in para 4 and 5...

6 **CHANDER UDAY SINGH:** I saw that, My Lord. I saw that.

7 **CJI SURYA KANT:** Pipeline was also keeping this mind, that the issue is now stand quite
8 shortened. It's only for the, as you rightly say, for the transitional matters which originated at
9 the time, when the old Act was there, until it has been substituted by, in 2020 by the new Act
10 and now formally repealed.

11 **CHANDER UDAY SINGH:** Now formally repealed. So only that formal repeal was perhaps
12 not drawn to Your Lordship's attention, on 16th February. And there's also an Amendment Act
13 of 16th February. In the Code, has been amended formally by Parliament to encapsulate that
14 repeal.

15 **CJI SURYA KANT:** Yes. You can ask your junior to put all these compilations...

16 **CHANDER UDAY SINGH:** We have made a compilation of the three notifications, just for
17 Your Lordship, the three notifications of 21st November, 8th December and 2nd February, are
18 all three there just for...

19 **INDIRA JAISINGH:** My Lord, with your permission, there is one more issue I'd like to flag,
20 before the formal hearing begins. I would like to alert this Court, to the possibility, that any
21 judgment rendered by this Court on the interpretation of the old Law, will have an impact on
22 the new Law, and this may not be fair to us on this side; because now the two sides are pretty
23 clear. There is one side asking for the reconsideration of *Bangalore Water Supply*, and
24 there is this side saying, it need not be reconsidered. Now, my question for consideration is
25 this, whatever view Your Lordship takes of the matter, will definitely have an impact on the
26 new Law. The definition of Industry under the new Law. And we are not here called upon to
27 address you, on the question of the new Law. Therefore, My Lord, this danger has to be
28 averted. How do we avert this danger, My Lord, without transgressing into the constitutional
29 validity of the new Law, which we want to keep it as an issue, which will be raised in times to
30 come? As of today, there is no petition pending before you.

31 **CJI SURYA KANT:** That much clarification can be given, that, while taking a view with
32 respect to whether the *Bangalore Water Supply* or with respect to the original definition,
33 under the Repealed Act, while construing or interpreting that part.

1 **INDIRA JAISINGH:** Yes My Lord.

2 **CJI SURYA KANT:** I think that, the word of caution can always be put, that, this
3 interpretation only relates to the Law as it used to be at that time.

4 **INDIRA JAISINGH:** My Lord, yes. With respect, my Lord, there is an unavoidable overlap,
5 for the reason... I wish to make it clear, so that my rights are protected, that's all. The point is
6 there is an unavoidable overlap between what Your Lordships may decide and what the new
7 law says. What the new law does is, it basically My Lord, the crux of the matter today, as far as
8 I see it, is the request on the other side to remove charities, and from the purview...

9 **CJI SURYA KANT:** We are not hearing that matter, for the time being because...

10 **INDIRA JAISINGH:** Because the new law removes it. Now the point is, we are going to
11 challenge that removal of charities from the new law, and also very wide definition of social
12 work. What social work is excluded from the new law?

13 **CJI SURYA KANT:** That challenge, we will independently deal with.

14 **INDIRA JAISINGH:** That's true, My Lord, but Your Lordship's judgment will [UNCLEAR]
15 bind us...

16 **R. VENKATARAMANI:** Yes, to put it in a different...

17 **INDIRA JAISINGH:** ... as far as any challenge to the new law is concerned, My Lord.
18 Therefore, I wish to make it clear. All submissions are completely without prejudice to our
19 contention.

20 **CJI SURYA KANT:** Yes.

21 **INDIRA JAISINGH:** And the new law is liable to challenge.

22 **CJI SURYA KANT:** Yes, that of course you have clarified.

23 **INDIRA JAISINGH:** That you should keep in mind because...

24 **R. VENKATARAMANI:** Just to put it in a different...

25 **INDIRA JAISINGH:** ...submission will be without prejudice.

26 **R. VENKATARAMANI:** Put it in a slightly different track taking cue from my learned
27 friend's from submission. Imagine that this Bench is today assembled to look into a challenge
28 to a new law. Imagine, and then the court will find out whether after a repeal of an earlier law
29 and the judgment which prevailed with an earlier law, will it cast a shadow on the new law at
30 all? The court will seem to be at an entirely different angle. Entirely different angle. Therefore,

1 whether in the... without a challenge to the new law as per the court is not confronted with
2 that...

3 **GOPAL SANKARANARAYANAN:** I just want to clarify one thing. There is a challenge to
4 the new law...

5 **R. VENKATARAMANI:** Not before this Bench.

6 **GOPAL SANKARANARAYANAN:** Can I, can I just complete? It's writ petition 26... 330.

7 **CJI SURYA KANT:** Mr. Gopal, if there is, we will separately examine that.

8 **GOPAL SANKARANARAYANAN:** No, I am just saying, we need to bear in mind that
9 Parliament has taken a call on the definition that exists in...

10 **CJI SURYA KANT:** We know, we have to bear in mind, and that much basic understanding
11 we possess.

12 **GOPAL SANKARANARAYANAN:** No, no...

13 **CJI SURYA KANT:** Now let us start.

14 **GOPAL SANKARANARAYANAN:** I am just clarifying that...

15 **CJI SURYA KANT:** When it had started already; I have fixed the time; I will not allow
16 anything to go beyond that.

17 **GOPAL SANKARANARAYANAN:** That writ is pending. Your Lordship may consider it at
18 some point.

19 **CJI SURYA KANT:** Yes, Mr. Venkataramani.

20 **R. VENKATARAMANI:** Yes Your Lordship. It's a... personally speaking, I have a lot of
21 reflections and remembrances as to how, what might have gone into the mind of the learned
22 judge who authored this opinion. And in a manner of speaking, it's a it's a kind of a
23 Kurukshetra here. Now there are only Pandavas on either side; there are no Kauravas and
24 Pandavas, because both are articulating some variety of issues on some very common concern.
25 But why is that the court is now called upon?

26 **CJI SURYA KANT:** Yes.

27 **R. VENKATARAMANI:** Why the court is now called upon to answer this question at all?
28 For an easy answer would have been that the new law has come, it has taken over the field,
29 and whenever there is an application, a new law, and whatever the precedents occupy the field
30 under the old law otherwise, repealed or amended or whatever it is, they may be cited in
31 support or cited in opposition under the formulations of the new law. But then, we're not

1 arguing in the abstract because what happened is, the new code, the 2020 code, has to a
2 considerable extent picked up from paragraphs 140 and 141 of the **Bangalore Water**
3 **Supply**. The new definition has picked up something from the judgment. But then the trouble
4 or the or the question still remains as to number of illustrations which the **Bangalore Water**
5 **Supply** looked into, various activities **Bangalore Water Supply** looked into, and
6 answered. Either way, they may continue to come arise you know time and again in future,
7 particularly in things like charitable institution, philanthropic institutions, education, or by
8 and large governmental functions. So therefore, when **Bangalore Water Supply** was
9 heard, and then if Your Lords will see **Bangalore Water Supply** right from **Banerjee**
10 onwards, goes by and large to a large extent on Australian precedence. And because our
11 Industrial Disputes Act was also borrowed to a considerable extent from the Australian law.
12 So, if more than 1904, 1910 Australian experience, and that's how **Banerjee** onwards there
13 was a long discussion on why a large, wider import of the words used in the industrial
14 definition of Industry came to be considered. So today, if the court were to say, in terms of the
15 issues framed, can I take Your Lordship to the courts has framed the issues for consideration
16 in the order dated 16th of February. We have our compilations in Volume 1 of my volume...
17 Volume 5B. Volume 5B of the compilation. We have made available hard copies also for the
18 court. I'll be referring to Volumes 4B and 5B, which are compilations filed on behalf of the
19 Attorney General, and my written submissions in Volume 1A.

20 **CJI SURYA KANT:** 1A? yes please.

21 **R. VENKATARAMANI:** Your Lordship, at page 139 is a... whatever Your Lordships framed
22 the issues. If you read them and then place my humble observations on how do you go about
23 answering these issues. Issue number one, I find issue number one as two parts: whether the
24 tests laid down in paragraphs 140 to 144, in the opinion rendered by Honourable Mr. Justice
25 V. R. Krishna Iyer in so and so, to determine if an undertaking or enterprise...

26 **CJI SURYA KANT:** Page?

27 **R. VENKATARAMANI:** 139, Volume 5B.

28 **CJI SURYA KANT:** These are only the judgments which are being relied upon.

29 **R. VENKATARAMANI:** At page 139, this compilation has an entire set of judgments,
30 including **Bangalore Water Supply** and then earlier...

31 **CJI SURYA KANT:** All 37 judgments are there.

32 **R. VENKATARAMANI:** That's right, but I'm reading at page 139. 16th February 2020,
33 which Your Lordships framed the issues for consideration by this nine...

1 Issue... page 139, issue number one. Whether the test laid down in paragraphs 140 to 144 in
2 the opinion rendered by Honourable Mr. Justice Krishna Iyer in **Bangalore Water Supply**,
3 to determine if an undertaking or enterprise falls within the definition of Industry and lays
4 down the correct law. I pause here for a minute. The issue, I think, is advisedly framed like
5 this, to only go into the question whether an undertaking or an enterprise falls within the
6 definition of Industry and lays down the correct law. And the second part of it, "and whether
7 the Industrial Disputes Amendment Act 1982, which seemingly did not come into force and
8 the Industrial Relations Code 2020, so and so, have any legal impact on the interpretation of
9 the expression 'Industry' as contained in the Principle Act". So if I consider this as two issues,
10 two separate issues, and because they may have the significance, so let me, in that then the
11 second issue, "whether social welfare activities and schemes or rather enterprises undertaken
12 by the Government departments or their instrumentalities, can be construed to be Industrial
13 activities". The issue also again advisedly uses the word 'enterprises'. Then for the purpose of
14 Section 2(j), of the ID Act. Now three, "what State activities will be covered by the expression
15 'sovereign function' and whether such activities will still fall outside the purview of Section 2(j)
16 of the ID Act, any other issue that may arise".

17 Now I think it's important for us, then, to go back in point of time to the earlier order, Referral
18 Orders may call it, which is in the same volume at page 94, which is a reported judgment
19 **(2005) 5 SCC 1**.

20 **CJI SURYA KANT:** Yes, we will go to 90?

21 **R. VENKATARAMANI:** Yes, the judgment begins at page 102.

22 **CJI SURYA KANT:** [UNCLEAR]

23 **R. VENKATARAMANI:** That's right. Let us look at a couple of paragraphs which probably
24 persuaded this court to enter into a question of a reference, para 2 at page 102, "on the question
25 whether Social Forestry Department of State, which is a welfare scheme, undertaken for
26 improvement of the environment would be covered by the definition of Industry, under
27 section, so and so, the aforesaid benches which are noticed in paragraph 1, as this Court culled
28 out, differently, the ratio of the Seven Judge Bench decision, is quote in the case of so and so,
29 and both of the three Judges in the case of Chief Conservator of Forests in Kundera and based
30 on the decision of **Bangalore Water** case, came to the conclusion, that, the Social Forestry
31 Department is covered by the definition of Industry, whereas the Two Judge Bench decision
32 in so and so, took a different view. And the cleavage of opinion between the two Benches of
33 this Court seems to have been at the basis of the seven bench decision of the Court, and so and
34 so. The present case along with the other connected cases, the correct decision in the case is
35 doubted, has been placed before the Bench. Various decision rendered by the Court prior to

1 and after the decision of **Bangalore Water** on the interpretation the definition of 'Industry'
2 and 'Industrial sector' have been cited before us. It's been sinuously urged, and behalf of the
3 employers and the expansive meaning given to the word 'Industry' with certain specified
4 exceptions carried out in the judgement of **Bangalore Water**, is not warranted by the
5 language used in the definition clause. It is urged the Government and department will,
6 exercising its sovereign function, have been excluded from the definition of Industry on the
7 question of what is 'Sovereign Function'. There is no unanimity in the different opinions
8 expressed by the Judges in **Bangalore Water** case. It is submitted in a constitutional
9 democracy, the sovereignty rests in the people. All welfare activities undertaken by the State
10 in the discharge of his obligations, and the directive in State policy contained in Part 4 of
11 Sovereign Function. To restrict the meaning of Sovereign Function to only specified categories
12 of so-called inalienable functions, like 'Law and Order, 'Legislation', 'Judiciary',
13 'Administration' the like is uncalled for. Submitted that the definition of Industry given as act,
14 is no doubt wide, but not so wide as to hold to include all kinds of systematic organized
15 activities undertaken by the State and even individuals engaged in the professional
16 philanthropic activities.

17 Then, "on behalf of the..." I'll skip para... On behalf of the employers is also pointed out, that,
18 "there is no unanimity in the opinions expressed by the judges in **Bangalore Water** case on
19 the ambit of definition of Industry given in the act. Pursuant to the observations, the
20 legislature responded and amended the Act by the Industrial Amendment Act 1982. In the
21 amended definition, certain specified types of activities have been taken out of the purview,
22 over Industry Act stands amended. But the amended provision redefining the word 'Industry'
23 has now brought into force, because notification to bring this provision, the effect has not been
24 issued, in accordance with Subsection 2. Section 1, the Amendment Act, "The amended
25 definition thus remains the statute and enforce the period now more than 23 years".

26 Now, kindly switch over to the long discussion **Bangalore Water Supply**. Page 110,
27 paragraph 18. "There is some point of view that there is a difference of opinion among the
28 judges, but I think it's in a very narrow area". And paragraph 18, "Krishna Iyer himself will
29 deliver the main judgment in **Bangalore Water**. At various places, in his opinion expressed
30 that the attempt made by the court to impart a definite meaning to the words delivered
31 definition of C is only a workable solution until a more precise definition is provided by the
32 legislature. See the following observation. Our judgment here has no quantifiable flavour, but
33 seeks to serve the future, however, till changes the law in industrial culture occur." That's
34 important words. "Law, especially industrial law which regulate the rights and remedies of the
35 working class unfamiliar with the sophistication of definitions and shower of decisions unable
36 to secure expert legal opinion, what poverty pricing model justice market and denying them

1 the staying power to withstand the multi litigation *de facto* denies social justice, if legal
2 drafting is vagarious, and definitions- indefinite, and court ruling's contradictory. Is it possible
3 that the legislative chambers are too preoccupied other pressing business to listen to court
4 signals calling for clarification ambiguous clauses? A careful prompt amendment of Section
5 2(j) would have pre-empted the docket explosion before Tribunal in court." I pause here.

6 And then kindly come to paragraph 19. Again, para 145, the court echoes the same. I'm going
7 to read it once again when in the course of my submission. 145 is extracted in paragraph 19. I
8 read paragraph 145. " We conclude with a diffidence because Parliament which has the
9 commitment to the political nation to legislate promptly in vital areas like Industry and trade,
10 and articulate the welfare expectation in the conference portion of the Constitution, has hardly
11 intervened to restructure the rather clumsy, vaporous and tall and dwarf definition or tidy up
12 the scheme." Before the court, does Krishna Iyer himself think the definition of Industry were
13 clumsy, vaporous and tiny and all that? I'll come back later about that.

14 Then come to paragraph in the next page, paragraph 21. "The dissenting opinion of Justice
15 Jaswant Singh for himself in **Kondhare** concludes with the following observation. In view of
16 the difficulty experienced by all of us in defining the true denotation of the term "Industry",
17 and divergence of opinion in regard to that too, as has been the case with his Bench also. We
18 think, it is high time the legislature substituted the comprehensive bill to clear up the fog and
19 remove the doubts, and set it as once for all, the controversy which crops up from time to time
20 in relation to the meaning of the aforesaid term, rendering it necessary for larger benches of
21 this court to be constituted which are driven to the necessity of evolving a working formula to
22 cover particular cases." By the time we did not have the 2020 code. We are still awaiting
23 Parliament code or Parliament is still yet to act. "So, the above observations contain the
24 dissenting view of Justice Jaswant Singh have proved prophetic. The legislature has
25 intervened and amended the definition of Industry in 1982, but for more than 23 years the
26 amended provisions are not being brought into force. The unamended definition, with the
27 same vagueness and lack of precision, continues to confuse the courts and the Parties..." I may
28 not agree with that observation, but I'll come to it later. "... The inaction in the Legislative and
29 Executive branches has made it necessary for the judiciary to reconsider the subject over and
30 over again in the light of the experience of the working of the provisions on the basis of
31 interpretation judgment in **Bangalore Water** rendered as far back as the year 1978."

32 The next paragraph. "In the case of **Coir Board**, a two-judge bench speaking to Sujata
33 Manohar J, surveyed all previous decisions of court including the seven-judge's decision in
34 **Bangalore Water**, and passed an order of reference to the Chief Justice constituting a larger
35 bench of more than seven judges, if necessary, the following part of the order. Since the
36 difficulty arisen because of the judicial interpretation given to the definition of Industry in the

1 Industrial Disputes Act, there is no reason why the matter should not be judicially re-
2 examined. In the present case, the function of the Coir Board is to promote coir Industry, open
3 markets for it and to provide facilities to make the coir Industry's products more marketable.
4 Such is the nature of service. It's not set up to run any Industry itself. Looking to the
5 predominant purpose for which it is set up, we would not call it an Industry. However, you
6 want to apply the test later on **Bangalore Water Supply**, it is an organization where there
7 are employers and employees, the organization does some useful work for the benefit of others,
8 therefore it will have to be called 'Industry' under the Industrial Disputes Act. We do not think
9 that such sweeping stakes as contemplated under the Industrial Disputes Act, nor do we think
10 that every organization, which does useful service and employs people, can be labelled as
11 'Industry'. We therefore direct the matter to be placed before the Honourable Chief Justice to
12 consider, larger bench should be constituted and so on so.

13 The next paragraph. In the matter was listed before a three judge bench, the recovery
14 constituting a larger bench for consideration of the judgments so and so, was refused both on
15 the ground that the Industrial Dispute Act has undergone an amendment and the matter does
16 not deserve to be referred to a larger bench as the decision of seven judges bench is binding
17 on the benches of the court or less than seven judges. The order refusing the reference of seven
18 judge bench decision by its so and so reach does. We have consider the order made in civil
19 appeal so and so, delivered almost two decades ago. The law has since been amended pursuant
20 to judgment, though the date of enforcement has not been notified. The judgement delivered
21 by so and so does not, in our opinion, require any reconsideration or reference being made by
22 a two judge bench of this court, is bound by judgment on the bench. The appeal therefore, for
23 the appropriate direction. Thus the reference sought by two judges to a larger bench of more
24 than seven judges was declined by three judge bench. As has been held by the court
25 subsequently, in the case of **Central Board of Dawoodi Bohra** and so-and-so is open to
26 the Chief Justice and the reference made by the honourable judges to constitute a bench of
27 more than seven judges for reconsideration of the decision in **Bangalore Water Supply**.

28 24, next page. In any case, no such inhibition limits the power of the bench of five judges which
29 has been constituted on a reference made due to apparent conflict between judgments of two
30 benches of this court. As has been stated by us above, the decision in **Bangalore Water**, is
31 not a unanimous decision. Of the five judges who constituted the majority, three have given a
32 common opinion but the two others are given separate opinions, projecting a view partly
33 different from the views expressed in the opinion of the other three judges. Beg CJ, having
34 retired, had no opportunity to see the opinion delivered by the other two judges subsequent
35 retirement. Krishna Iyer and the two judges who spoke to him did not the benefit of dissenting
36 opinion of the two other judges and a separate partly dissenting opinion of Chandrachud J, as

1 those opinions were prepared and delivered, subsequent delivery of the judgment in
2 **Bangalore Water** case. However that seems to the dynamics of this court with this
3 combination of bench of more than two. In such a situation is difficult to ascertain whether
4 the opinion of Krishna Iyer J given on behalf and behalf Bhagwati and Desai JJ can be held to
5 be an authoritative precedent which would require no reconsideration, even though, judges
6 themselves expressed the view that the exercise of interpretation done by each one of them
7 was tentative, and is only a temporary exercise till the Legislative Assembly. Legislature
8 subsequently amended definition, but due to lack or feel both on the part of the legislature and
9 the executive, the amended definitions are long period of 23 years, has remained dormant.

10 So and so appearing for National Remote Sensing Agency, which is an agency constituted by
11 the government in discharge of its sovereign function dealing with defence, research, atomic
12 energy and space falling in the exclusive category in subclause 6 with the amended definition
13 Industry in Section 2(j), relies on the following decision in support of its submission, that
14 where the unamended definition in the Act is ambiguous and has been interpreted by the court
15 not exhaustively but tentatively. And the law is amended, the amendment actually brought
16 into the statute can be looked into for consideration for construction of the unamended
17 provision.

18 Then next paragraph. On the agenda further argued, that the Industrial Disputes Act 1982
19 noted the views. Not only of the definition of Industry is provided in various other provisions,
20 the Principal Act also amended. Subsection 2(1) of the Amendment Act, says the act shall come
21 into force in so and so, by notification the official got a point. He submitted either the all of the
22 act should have been notified for enforcement or not at all. The Amendment Act does not
23 contemplate a situation where the Central Government notify only some other provisions, the
24 Amendment Act for enforcement and withhold from enforcement the provisions amendment
25 Act. It's argued that such piecemeal enforcement Act is not permissible by Subsection 2, so
26 and so it is... Then little later and then I skipped that particular paragraph.

27 Then come to paragraph 28. Senior Advocate is Jaisingh and calling himself a counsel,
28 appearing for the employees very vehemently oppose a prayer made on behalf of the employers
29 for referring the matter to a larger Bench for reconsideration of the decision **Bangalore**
30 **Water** case. I think they have the same stand today. "It is submitted that even though the
31 definition of the industrial disputes have been amended in 1982, it has not been brought into
32 force for more than 23 years, and the reason disclosed to the Court, on the enforcement of the
33 Amendment Act was sought in the case of **Aeltemesh Rein**, in his sound justification, the
34 Stand of Union of India, was for the category of Industries excluded the amended definition,
35 'no alternative Industrial dispute resolution forums could be created'. For the aforesaid
36 reason, the Central Government did not enforce the provision of the Amendment Act, which

1 provided a new and restricted definition of Industry. General Counsel for the employees relied
2 on **A. K. Roy**, in support of submission, they did not open to the Court to issue amendments
3 to the Government to bring into force the provisions of the Act. Submitted that it is the
4 prerogative of the Government in accordance with the provisions of the Amendment Act, to
5 enforce the Provisions Act, when it finds that there are conditions suitable to take out the
6 purview of the definition of Industry, certain categories of industries, in which the employees
7 have been provided separate forums redressal of the industrial disputes.

8 Then paragraph 30, on behalf of the employee submitted pursuant to the decision, although
9 the legislature responded by amending the definition of Industry, to exclude certain specific
10 categories of Industries from the purview of the Act, employee to the excluded categories of
11 industries could not be provided alternative forums for redressal of the grievance, the
12 unamended definition of Industry has interpreted in **Bangalore Water** has been the settled
13 law of the land, the industrial field a settled legal position, has operated well and no better
14 enunciation and scope and effect of the definition could be made, either by the Legislature or
15 by the Indian Labour Organisation, in its report". That's a very ambitious statement.

16 Then kindly come to... The Court looks at paragraph 35 at page 117.

17 **CJI SURYA KANT:** 33 also have some...

18 **R. VENKATARAMANI: Coir Board** is referred to, and for good reason they're referring
19 to paragraph 19. After para 19, which I read out earlier at page 118, this is how the referral
20 order reads. "The above quoted observations were criticised, on behalf of the employees,
21 stating that for making them there was no material before the Court. We think the
22 observations of the learned judge are not without foundation. The experience of Judges in the
23 Apex Court is not derived from the case in which the observations are made. The experience
24 was from the cases regularly coming to the court, to the Labour Courts. It is experienced by all
25 dealing in Industrial Law with over-emphasis on the rights of the workers, and the undue
26 curtailment of the rights of the employee to organize the business through employment, and
27 unemployment has given rise to a large number of industrial and labour claims resulting in
28 awards granting large amounts of back wages for past years, allegedly as legitimate views of
29 the workforce are found to have been so and so".

30 Then after Placitum F. "The awards of reinstatement and arrears of wages for the past years
31 of labour caused by treating even small undertakings of employers and entrepreneurs of the
32 Industry's experience as a serious industrial hazard, particularly with those engaged in private
33 enterprises. They experience it many times; idle wages are required to be paid to the worker
34 because the employer has no means to find out whether and where the workman was gainfully
35 employed pending adjudication. Exploitation of workers and the employer has to be equally

1 checked, Law and particularly Industrial Law needs to be interpreted, as to ensure that neither
2 the employers nor the employees are in a position to dominate the other. Both should be able
3 to cooperate for their mutual benefit, the growth of Industry and thereby serve the public good,
4 and over expansive interpretation might be deterrent to private enterprise in India, where
5 public employment opportunities are scarce. The people should, therefore, be encouraged
6 towards self-employment, embrace with the definition of Industry, even liberal professions
7 like so and so and the like, which are occupations based on talent, skill and intellectual
8 attainment; is experienced as a hurdle by professional and self asserts in carrying on their
9 professional necessity. No doubt even liberal professions are required to be regulated and
10 reasonable restriction imposed. If you adopt an ideological, philosophical approach, we would
11 be treading on the wrong path against which, learned Shri Justice Krishna Iyer himself
12 recorded a caution in his inimitable style. Thus, here we have to be cautious not to fall into the
13 trap of definitional expansionism, bordering on *reductio ad absurdum* nor to truncate the
14 obvious amplitude of the provision to fit into our mental mould of beliefs and prejudices, or
15 social philosophy, conditioned by class interests. Subjective it shall not be further to the
16 forensic thought, if credibility with a pluralist community is a value to be cherished. Courts do
17 not substitute their social and economic beliefs for the judgment of legislative bodies..."

18 I think, very often we take a different note on this, of course, courts do, but then how far they
19 can do is a different question. "So, a worker-oriented approach in construing the definition of
20 Industry, unmindful of the interests of the Employer or the Owner of the Industry, and the
21 public were the ultimate beneficiaries, would be a one-sided approach and not in accordance
22 with the provisions of the Act. We also wish to enter a caveat on confining sovereign function
23 to the traditional so described as 'inalienable functions' comparable to those performed by a
24 monarch or a ruler or a non-democratic government. The learned judges in **Bangalore**
25 **Water Supply** seem to have confined only such sovereign functions outside the purview of
26 Industry, which can be termed strictly as constitutional functions of the three wings of the
27 state - executive, legislative and judiciary. The concept of sovereignty in a constitutional
28 democracy is different from the traditional concept of sovereignty, which is confined to law
29 and order, defence, lawmaking, justice dispensation. In a democracy governed by the
30 constitutional sovereignty of the people, and the State is obliged to discharge as constitutional
31 obligation, contain the directive principles of state policy. From that point of view, wherever
32 the government undertakes public welfare activities in discharge of its constitutional
33 obligation as provided in Part 4 of the Constitution, such activities should be treated as
34 activities in discharge of sovereign functions falling outside the purview of Industry." That's
35 what Your Lordships want to look at, in the second and third issue."

1 Whether the Employee is employed in such welfare activities or the government, require
2 protection apart from the constitutional rights conferred on them, may be a subject of separate
3 legislation..." kindly mark it. "... may be a separate subject of separate legislation, but for that
4 reason, such governmental activities cannot be brought within the fold of industrial law by
5 giving an undue, expansive and wide meaning to the words used in the definition of Industry.
6 In response, Parliament intervened and substituted the definition of Industry by including...
7 by including with its meaning, some activities of the government, and excluding some other
8 specified governmental activities and public utility services involving sovereign function. For
9 23 years, the amended definition has remained unenforced. Government has been
10 experiencing difficulty in bringing into effect the new definition. Issuance of notification has
11 been withheld so far. Therefore, high time for the court to re-examine the judicial
12 interpretation given by it to the definition of Industry. The legislature should be allowed to
13 greater freedom to come forward with a more comprehensive legislation to meet the demands
14 of employers and employees in the public and private sector. The inhibition, the difficulties
15 arise being exercised by the legislature and the executive in bringing into fore the amended
16 industrial law, more due to judicial interpretation definition of Industry need to be removed.
17 The experience of working with the Provisions Act should serve as a guide for a better and
18 more comprehensive law on the subject to be brought into force without limitation."

19 Now that we have reached that stage, 1982 a notified law is no longer part of the canvas. So
20 now that I've read the 2020 code, a couple of questions may arise in your mind, as Jai Singh
21 was trying to canvass. Now, what is that important public purpose that will be served by this
22 court looking into the **Bangalore Water Supply** in its expansive speed and say that in one
23 way or the other, to some extent or the other, the **Bangalore Water Supply** is not good
24 law. There has to be some impact factor, if suppose, is it because the new code which is partly
25 lifted from **Bangalore Water Supply** in the definition of Industry but partly departing
26 from it. Therefore, if Your Lordships say that it's partly good law, certainly, it's going to carry
27 on and have it, cast a shadow on the application interpretation of the new code. But you say
28 on the other hand, no, no, don't do it at all, the new code will take care of itself. Therefore,
29 there is some problem where the court may have to very carefully tread. So, the court were to
30 say, well, it's good law for all practical purposes and the new code will certainly receive its
31 colour from this court's imprimatur of the **Bangalore Water Supply**, and to what extent
32 that exercise will be undertaken is also a question for Your Lordship's consideration. And let
33 me read... complete this and then come to it. Paragraph... para 42.

34 **CJI SURYA KANT:** Yes.

35 **R. VENKATARAMANI:** I'm leaving for the time being, para 41. Para 42, " In construing the
36 definition clause and determining its ambit, one has not to lose sight of the fact that in

1 activities like hospitals and education, concepts like the right of the workers to go on strike, or
2 the employer's right to close down and layoff, are not contemplated. Because their services, *in*
3 *vis-a-motto*, is service to the community. If the patients or students are to be left at the mercy
4 of the employer and the employee exercising their rights at will, the very purpose of service
5 activity would be frustrated. Then we are respectfully inclined to agree with the observations
6 of justice Gajendragadkar in ***Harinagar*** case, as we have repeatedly emphasized, in dealing
7 with industrial matters, industrial adjudication should refrain from enunciating any general
8 principle or adopting any doctrine or considerations. It is desirable, that industrial
9 adjudication should deal with problems as and when they arise and confine a decision to the
10 points which strictly arise on the pleadings within the party. That's a very, very ambitious
11 statement, if I can put it like that. Because, when you have issues like an Industry industrial
12 definition, to say that can be no room for doctrinal considerations, this is going to be a
13 problematic statement. But, that apart, the court is only bringing attention to the fact that
14 notwithstanding those doctrinal considerations, can you go beyond them the extent that's
15 possible. That's what perhaps the Gajendragadkar is talking about here.

16 We conclude agreeing with the conclusion of honourable judges in ***Hospital Mazdoor***
17 ***Sabha***. Though Section 2(j) used words as very wide denotation, a line would have to be
18 drawn in a fair and just manner, so as to exclude some calling services or undertaking. This
19 court must therefore reconsider, where the line should be drawn and what limitations can and
20 should be reasonably implied in interpreting the wide words in Section 2(j); that no doubt is
21 rather a difficult problem to resolve, more so when both the legislature and the executive are
22 silent and are kept an important amended provision on the law dormant on the statute book.

23 **CJI SURYA KANT:** Read para 45 before concluding this judgement. You may just read para
24 45 also.

25 **R. VENKATARAMANI:** Yes, yes. I'll come to that. We did not consider it necessary to say
26 anything more and leave it to the larger bench to give such meaning and effect to the definition
27 clause in the present context. With the experience of all these years and keeping in view, the
28 amended definition of Industry kept dormant for long 23 years, pressing demands for the
29 competing sectors of employer and employee and the helplessness so and so, the amendment
30 compelled us to make this reference. So perhaps that's what persuaded Your Lordships to have
31 the second part of issue one, which says what is the impact of amended... 1982 amendment
32 and the current code.

33 **JUSTICE B. V. NAGARATHNA:** You may add one more angle to this matter. ***Bangalore***
34 ***Water Supply*** is a judgment which came in 1970s. We have the reforms of 1991, which has
35 focused on liberalization, privatization and globalization. Now if there is going to be more

1 focus on privatization and liberalization, many of the functions which the state was doing
2 would be performed by the private sector, then what should be the scope of the definition of
3 Industry? Should it still be very expansive or should it be restricted or a balance has to be
4 struck? I think that is one of the angles of this case. Since that judgment is delivered almost
5 half a century ago,

6 **R. VENKATARAMANI:** Correct.

7 **JUSTICE B. V. NAGARATHNA:** Now we are in 2026 and we have had how many years of
8 liberalization and I say LPG liberalization, privatization, globalization.

9 **R. VENKATARAMANI:** Correct.

10 **JUSTICE B. V. NAGARATHNA:** Which are so important for a woman also... LPG. All I
11 would say...

12 **R. VENKATARAMANI:** No...there's no, there's no shortage. There's no shortage of LPG.

13 **JUSTICE B. V. NAGARATHNA:** Get it!

14 **R. VENKATARAMANI:** There's no LPG shortage today here as far as that is concerned. No,
15 I think responding to Your Lordship's observation, let me let me place that...

16 **JUSTICE B. V. NAGARATHNA:** A century ago, we were on socialist philosophy and you
17 know what has happened in the property owners' case *Ranganatha Reddy* etc.

18 **R. VENKATARAMANI:** Right, it's a very important observation. Let me respond to it
19 quickly before I go into the larger question. Now, whatever socio economic changes happen in
20 a community or a country, particularly where you're talking about, liberalization, etc.,
21 globalization, privatization, opening up market in a big way. The question will still remain, if
22 the definition of Industry in 2(j) had continued to occupy the statute, then, of course, we need
23 to call. In the context of a definition which remains unchanged; whether *Bangalore Water*
24 *Supply* would continue to provide us enough guidance, or we need to go a little away from
25 that, or move away farther from that. But today, since we don't have that situation at all, we
26 have both a 1982 interlude not notified; and a later Court which is now occupying the field.
27 Therefore, I think, Your Lordships will have to probably answer these issues in a very narrow
28 perspective, as to whether between 1978 to 2020, will it be a good, only for the purpose of
29 answering those matters which are pending before the Court?

30 **JUSTICE B. V. NAGARATHNA:** Yes. Matters are pending before the court....

31 **R. VENKATARAMANI:** That's right. It is only for a limited purpose, if it's only for a limited
32 purpose, then of course, the Court need not travel a long line, of entering into all the debates

1 about what would be sovereign function, so on and so forth. But if it's for a larger, you know,
2 canvas, then I think I would probably tell the Court, "be slow in looking into the issue". Because
3 the new Court, to a considerable extent, as has borrowed from one para 140 of the **Bangalore**
4 **Water Supply** but has departed in certain respects. For whatever the Code may say today,
5 whether **Bangalore Water Supply** in the entirety, or partly, or rule partly, approved or
6 whatever it is, will certainly cast a shadow on the interpretation of the new Code, to the extent
7 it has some overlapping. Therefore, I thought it was only for the purpose of answering, and
8 responding to the matters pending prior to 2020, but as we walk in a very narrow path. We
9 walk in a very narrow path. Many larger considerations need not enter the mind of the Court
10 in unravelling **Bangalore** is a good law, bad law, doctrine, no doctrine etc. So I thought that's
11 something I'm not very clear whether...

12 **JUSTICE B. V. NAGARATHNA:** It should be activity based, for example, Social Forestry.
13 Activity based has to be considered.

14 **R. VENKATARAMANI:** May I presently place, therefore, how, for instance, from 2(j) in the
15 1947 Act, 1982 definition and then the current definition; I'll quickly place that, so that we
16 have a perspective on why, where we should probably stop, and where perhaps, the Lower
17 Courts will not go further. Now kindly take, in the compilation...

18 **JUSTICE DIPANKAR DATTA:** Just one question.

19 **R. VENKATARAMANI:** I'm sorry.

20 **JUSTICE DIPANKAR DATTA:** Refer to para 45.

21 **R. VENKATARAMANI:** Yes.

22 **JUSTICE DIPANKAR DATTA:** Now, where do we find, in the Judgement, what the
23 pressing demands of the competing sectors were, and what difficulties were faced by the
24 legislature and the executive to enforce the amended definition of Industry which compelled
25 the Five Judge Bench to make the reference? Where is that discussion?

26 **R. VENKATARAMANI:** No. They go through... There are 3 or 4 cases which have been dealt
27 with. Kindly come back to paragraph...

28 **JUSTICE DIPANKAR DATTA:** No, no, Paragraph 45 refers to, "this is the final conclusion,
29 that, it is because of the pressing demands and the helplessness of the legislature and
30 executive, that we are making a reference."

31 **R. VENKATARAMANI:** No, the Court goes back to **Bangalore Water Supply** itself, to
32 say, that, **Bangalore Water Supply** both in terms of Justice Krishna Iyer judgment, and

1 the opinion by Justice Jaswant Singh, Justice Tulzapurkar, and partly Chief Justice
2 Chandrachud, also take note of it. Now we are... I think that's where...

3 **JUSTICE DIPANKAR DATTA:** Please come back to 45.

4 **R. VENKATARAMANI:** Yes.

5 **JUSTICE DIPANKAR DATTA:** This refers to an incident which was not there when
6 *Bangalore Water Supply* was decided. They say that, "the legislature and the executive
7 are helpless in bringing into force the Amendment Act." That is 1982.

8 **R. VENKATARAMANI:** Yes.

9 **JUSTICE DIPANKAR DATTA:** That was not there in *Bangalore Water Supply*. It
10 precedes 1982 Amendment. What prevented the legislature and the executive to enforce the
11 Amendment Act, which is compelling the five Judges Bench, to refer it to the Chief Justice?
12 Where do we find that?

13 **R. VENKATARAMANI:** No, no, there is no material in available in the judgment.

14 **JUSTICE DIPANKAR DATTA:** Not there in the judgment.

15 **R. VENKATARAMANI:** But then, I have placed on record.

16 **JUSTICE DIPANKAR DATTA:** If it is not there in the judgement, what is, we would, at
17 least I would be questioning you, whether it's a valid reference? First.

18 **R. VENKATARAMANI:** No but I... Yes.

19 **JUSTICE DIPANKAR DATTA:** Secondly, the bench has, in Paragraph 24, has repeatedly
20 said, "this is not a unanimous opinion".

21 **R. VENKATARAMANI:** It is.

22 **JUSTICE DIPANKAR DATTA:** Madam just one minute.

23 **R. VENKATARAMANI:** 24, yes.

24 **JUSTICE DIPANKAR DATTA:** 24, *Bangalore Water Supply*, fourth line, "is not a
25 unanimous decision. Of the seven, five were on one side, two were on the other side. How is it
26 relevant?

27 **R. VENKATARAMANI:** No, I'm not...

28 **JUSTICE DIPANKAR DATTA:** Seven-judge bench, it has to be considered as a seven-
29 judge judgment. In *Trimurti Fragrances*, quite recently says, irrespective of the number
30 of judges dissenting, it has to be taken as the judgment...

1 **R. VENKATARAMANI:** I'm not, I'm not here to support that at all. Let's... let's look at it
2 from...

3 **JUSTICE DIPANKAR DATTA:** Lead opinion which has to... [INAUDIBLE] that is the law.

4 **R. VENKATARAMANI:** No, let me put it...

5 **JUSTICE DIPANKAR DATTA:** First thing, the five-judge bench says that it is not a
6 unanimous, as if this is a ground for making a reference. Secondly, Justice Iyer, on behalf of
7 Bhagwati and Desai JJ, whether it can be held to be an authoritative precedent, a five-judge
8 bench questioning the seven-judge's bench?

9 **JUSTICE B.V. NAGARATHNA:** Yes.

10 **R. VENKATARAMANI:** No, that's why, that's why when this difficulty arose...

11 **JUSTICE DIPANKAR DATTA:** When referring to...

12 **R. VENKATARAMANI:** That's why when the difficulty arose...

13 **JUSTICE DIPANKAR DATTA:** Dr. Manohar's judgment which was placed before a larger
14 bench, the larger bench did not agree with the two-judge bench, and did not refer.

15 **R. VENKATARAMANI:** In... that's when the difficulty arose, kindly turn to why... at page
16 113, the court, when the earlier endeavour in *Coir Board* did not meet with the approval by
17 a subsequent three-judge bench, at page 113 bottom, that's how these references ultimately
18 been made. So I do not know, I do not know... I'm...

19 Going to come back to page 113...

20 **VIJAY HANSARIA:** What *apropos* what fell from My Lord, Justice Datta, I can just point
21 out one more... one more aspect, My Lord...

22 **CJI SURYA KANT:** We will not permit, Mr. Hansaria. This is not the way to argue. Let him
23 complete first of all.

24 **R. VENKATARAMANI:** Page 113 at the bottom.

25 **CJI SURYA KANT:** We will not allow anyone to interrupt.

26 **R. VENKATARAMANI:** Page 113, bottom. It is at the bottom of the page. The reference
27 sought by the two judges to a larger bench, as has been held by the court subsequently in the
28 case of *Central Board of Dawoodi* also, is open to the Chief Justice

29 **JUSTICE DIPANKAR DATTA:** Paragraph?

30 **R. VENKATARAMANI:** Page 113 at the bottom. It is at the bottom of that page.

1 **CJI SURYA KANT:** Thus the reference sought by two more than seven three were declined
2 by the five judge bench rightly so because that's contrary to rules.

3 **JUSTICE DIPANKAR DATTA:** Perhaps, perhaps this is also the statement Mr. Attorney.
4 Others can refer it to three; three to five and five to seven, and this is the course that has been
5 followed let.

6 **R. VENKATARAMANI:** Let me complete, let me complete the history.

7 **JUSTICE DIPANKAR DATTA:** You can directly refer it to seven.

8 **R. VENKATARAMANI:** Let me complete the history. I've not yet completed the history. So,
9 that's how I think it came before a bench of five judges. Now kindly turn to page 123...

10 **CJI SURYA KANT:** This last line is absolutely correct statement of law, because under the
11 Supreme Court rule, Chief Justice...

12 **R. VENKATARAMANI:** The Chief Justice takes a call on that and a five judge's bench is
13 constituted. The five judges bench take a view that there is a need for a reference, and then the
14 matter goes before a bench of seven judges at page 123, and we are at order at page 125. So in
15 a manner of speaking, when the seven judges bench placed his stamp of approval on the
16 reference, that's how, now before Your Lordship, page 125. Your learned counsel for the parties
17 at considerable length, have been taken through so and so, and the reference order passed by
18 the five judges' bench of the court pursuant to which these matters have been placed before
19 us. Having given our anxious consideration to the contentions urged at the bar and the serious
20 and wide ranging implications of the issue that fall for determination, as also the fact that
21 serious doubts have been expressed in the reference order about the correctness of the view
22 taken in so on so; we are of the opinion that these appeals need to be placed before a bench
23 comprising nine judges to be constituted by the Chief Justice. We order accordingly, papers to
24 be so and so. Therefore a seven versus seven. Bangalore seven, this seven. So I don't know
25 whether that part of a referral process need to halt Your Lordships on the further inquiry. And
26 now that we have travelled this distance, the only importance would be as I said to point out
27 earlier, is that what is the... what is the area to be covered by this?

28 **CJI SURYA KANT:** So we can examine all issues, but learned Attorney General you proceed
29 on the premise that there is a reference to Nine Judge Bench.

30 **R. VENKATARAMANI:** Yes.

31 **CJI SURYA KANT:** And we have to examine *Bangalore Water*.

1 **R. VENKATARAMANI:** That's right. May I then take Your Lordships to *Bangalore*
2 *Water Supply* itself directly? Volume 1, it's Volume 1... Volume 1A. We set out the issues
3 which *Bangalore Water Supply* is still framed, in paragraph 23 of its opinion. Page 29.

4 **CJI SURYA KANT:** Page?

5 **R. VENKATARAMANI:** Page 29. This is paragraph 23 of *Bangalore Water Supply*,
6 which is at page 25 of Volume 5B. I thought for the convenience sake...

7 **CJI SURYA KANT:** Paragraph 37, are you referring to?

8 **R. VENKATARAMANI:** That's right, 37. My written submissions note. Your Lordships also
9 may, alongside, keep the judgment compilation with this Volume 5B, but I'll be probably
10 reading between my Submissions and *Bangalore Water Supply* concurrently, that para
11 23 is at page 25 of the Judgment compilation, which is Volume 5B.

12 **JUSTICE B. V. NAGARATHNA:** Yes.

13 **R. VENKATARAMANI:** I have extracted here only for convenience. Your Lordships, also, I
14 said, keep open page 25 of Volume 5B for a minute, before I read these issues. Because almost
15 every page of *Bangalore Water Supply* has some beautiful literature and something which
16 goes far into our visionary thinking, as well as the problem which the Court encountered.

17 **JUSTICE B. V. NAGARATHNA:** Must be read along with a dictionary.

18 **R. VENKATARAMANI:** I mean, we cannot close our eyes and mind to the masterpiece of
19 literature available in these judgments. And they are so instructive and also guide us in,
20 whether thinking in unknown and novel ways. I want to read paragraph 22 at page 25, before
21 I take over the issues. Page 22 of Volume 5B. "A counter critic, on the other hand, may acidly
22 contend." My Lords have that page?

23 **CJI SURYA KANT:** Yes, please proceed.

24 **R. VENKATARAMANI:** Yes, "may acidly contend, that, if judicial interpretation,
25 uninformed by life's realities, were to go wild, every home will not be quiet castle, but a
26 tumultuous Industry, every research unit will grind to a halt, every God will face new demand
27 and every service club will be the venue of rumble..."

28 **CJI SURYA KANT:** You are reading where? You are reading where?

29 **R. VENKATARAMANI:** I am reading page 25 in volume 5B, I want to keep both of them
30 together. Paragraph 22 at the top of that page.

31 **CJI SURYA KANT:** 23 is reproduced in the submission.

1 **R. VENKATARAMANI:** That's right, but I just wanted...

2 **CJI SURYA KANT:** We want you to read para 22.

3 **R. VENKATARAMANI:** Yes. So, "counter critique may, on the other hand, may acidly
4 contend, that, if judicial interpretation uninformed by life realities were to go wild, every home
5 will be not a quiet castle, but tumultuous Industry. Every research unit will grind to a halt,
6 every God will face new demands. Every service club will be the venue of rumble, and every
7 charity choked off by brewing unrest, and the salt of the earth, as well as the lowliest of the lot
8 will suffer", Counsel for the Appellant struck a pessimistic note, is it not obvious from these
9 rival thought ways, that law is value loaded and the social philosophy is an inarticulate
10 interpretative tool, is inescapable in a school of jurisprudence. Probably Justice Krishna Iyer
11 had in his mind, Maxim Gorky's, 'The Mother'. He talks about how the industrial class, and it's
12 a very picturesque way.

13 Now let me read these issues. Now, let us itemize illustratively, the posers springing from the
14 competing submission, so that contentions may be concretised.

15 "1(a) Are establishments run without profit motive, industries?

16 (b) Are charitable institutions, industries?

17 (c) To undertakings governed by a no profit no loss rule statutorily but otherwise hasn't, fall
18 within the definition of Section 2(j)?

19 (d) Do clubs and other organizations like YMCA whose general emphasis is not on profit-
20 making by fellowship and self-service, fit into the definition circle?

21 (e) To go to the core of the matter, is it an inalienable ingredient of Industry that should be
22 plied with a commercial object?

23 2(a) Should cooperation between employer and employee be directed, insofar as it relates to
24 the basic services essential manufacturer which is the output of the undertaking?

25 (b) For a lawyer's chamber, a Chartered Accountant's office, a Doctor's clinic, a liberal
26 professional's occupation, a calling be designated as Industry?

27 (c) Whether university or a college, or a school research institute, be called an Industry?

28 (d) Is the inclusive part of the definition, Section 2(j), relevant to the determination of an
29 Industry? If so, what impact does it make on the categories?

30 (e) Do domestic service drudges who slay without respite become industries by this extended
31 sense?

1 (f) Are governmental functions *stricto sensu* industrial and if not, what is the extent of
2 immunity of instrumentalities of government?

3 (g) What rational criteria exists for a cut back on the dynamic potential and semantic sweep of
4 the definition, implicit in the industrial law of a progressive society geared to a greater
5 industrialization and consequent concern for regulating relations and investigating disputes
6 between employers and employees of industrial processes, and relations become more
7 complex and sophisticated, and workmen become more rights conscious.

8 As the provision now stands, is it scientific to define Industry, based on the nature... the
9 dominant nature of the activity, that is on the terms of the work, remuneration and conditions
10 of service which bond the two wings together into an employer-employee complex."

11 My Lords, kindly before I go further on reading ***Bangalore Water Supply***, if you can kindly
12 pick up Volume 4B where we have complete compilation of statutes. Volume 4B. It's titled
13 'Statutory and Documentary Materials'. At page 427 of this compilation, Volume 4B, we have
14 both the original definition and the amended definition in 1982. Page 427. Industry means, at
15 the top of it... that originally it was 2(j). Industry means... My Lords have that page? 427,
16 Volume 4B. Industry means any business, trade... I just for the sake of argument, I just close
17 my eyes for the other word 'undertaking;'. I continue to read as if the word 'undertaking' is not
18 there for the time being. So, Industry means any business, trade, manufacture or calling of
19 employers and includes any calling service, employment, handicraft or industrial occupation
20 or avocation of workmen. Now in a large number of cases, Your Lordships will find, the word
21 'undertaking' has come up for consideration both in the context of municipalities and few
22 other instances, the word 'undertaking' has received a lot of attention. And therefore, whether
23 is a *noscitur a sociis* or an *ejusdem generis* principle, the court has employed either of them,
24 and said, "I come to an understanding that undertaking must receive a wider import." Whether
25 or not there is a profit motive or commercial element and so on and so forth. That's why, at
26 the bottom of it, ***Bangalore Water Supply*** has reached that wide canvas.

27 Now let undertaking remain there as it is. At the same page, the amended act definition is also
28 available. Now this is how it reads. Industry means, any systematic activity carried on by
29 cooperation between an employer and his workmen, whether such workmen are employed by
30 such employee directly or by through an agency including a contractor for the production,
31 supply or distribution of goods or services with a view to satisfy human wants and wishes, not
32 being wants and wishes which are merely spiritual or religious in nature. Whether or not any
33 capital has been invested for the purpose of carrying on such activity or such activity is carried
34 on with a motive to make any gain or profit and includes... I skip again for the time being, this
35 block labour A and B. Your Lordships can now come back come to paragraph 140 of

1 **Bangalore Water Supply.** Just to make a quick note, page 14... paragraph 140 in Volume
 2 5B, page 73. Page 73, Paragraph 140. That is the concluding part where the court endeavours
 3 to define, Industry as defined and explained in **Banerjee** as a wide import. (A) whereas
 4 systematic activity organized by cooperation between the employer and employee, the direct
 5 and substantial element is critical for the production and distribution of goods and services
 6 calculated, satisfy human wants and wishes, not spiritual or religious but inclusive of material
 7 things or services geared celestial making a large scale output prima facie an Industry. That's
 8 what the 1982 Amendment tries to capture. And a little later absence of profit motive or gainful
 9 objective is irrelevant with a venture in the public joint private sector. Then true focus is
 10 functional and 3(d) organization as appears, the business it does not seem to be so on so.

11 I come back to page 427. Then we see once this definition is more or less borrowed from this
 12 part of one paragraph 140, then to that extent what the court was anxious to know whether
 13 the law is now to be on the lines we have debated, that is answered in 1982, to a considerable
 14 extent. But then 1982 Act also excludes certain parts and definition of Industry guide page 427
 15 after F1, 2, (a), (b) etc. There's the middle, but does not include. Does not include, one, any
 16 agricultural operation except as agricultural operations carried on in an integrated manner
 17 with any other activity. And such other activity is a predominant one, then explanation for the
 18 purpose of subclause agricultural operation does not include any activity carried on in a
 19 plantation as defined in so and so Plantation Labour Act, or two hospitals and dispensaries,
 20 three educational scientific research, or training institution; or four, institutions owned or
 21 managed by organization, only or substantially engaged in any charitable, social or
 22 philanthropic service; or Khadi or village industries; or any activity of the Government", this
 23 is important, "any activity of the Government relatable to the sovereign functions of the
 24 Government". It is averred very carefully, "activities relatable to the sovereign functions of the
 25 Government, including all the activities carried on by the departments of Central Government,
 26 dealing with defence research, atomic energy and space; or any domestic service; or any
 27 activity being a professional practice by an individual or body of individuals, if the number of
 28 persons so and so or board of individuals, in relation to, is less than ten; that takes care of
 29 clubs, associations etc. Any activity carried on by a cooperative society or a club-like body of
 30 individuals, if the number of persons employed so and so is less than ten".

31 Now kindly turn to, in the same Volume, at page 701, where the definition in the new Code.

32 **JUSTICE B. V. NAGARATHNA:** Is there a comparative study made, between what has
 33 been stated in the judgment with the 1982 Amendment, and, between the 1982 Amendment
 34 and the Labour Code?

35 **R. VENKATARAMANI:** There have been a large number of...

1 **JUSTICE B. V. NAGARATHNA:** ...of distinction.

2 **R. VENKATARAMANI:** There have been large number of discussions, consultations, there
3 is a...

4 **JUSTICE B. V. NAGARATHNA:** If there is a comparative study, it would be useful to the
5 Court.

6 **R. VENKATARAMANI:** I can place it. There is some Consultative Committee, there is a
7 Parliamentary Consultative Committee, we'll place it. There is a chart.

8 **JUSTICE B. V. NAGARATHNA:** That chart will be useful.

9 **R. VENKATARAMANI:** We will place it, we'll place all those materials. I thought for the
10 time being...

11 **CJI SURYA KANT:** You keep it. There's no need.

12 **R. VENKATARAMANI:** 701.

13 **CJI SURYA KANT:** Yes, Mr. Attorney, let's proceed further. 82 definition, we are not sure
14 how much it is going to help you, as my brother has already pointed out, we have the legislative,
15 you can put the executive.

16 **R. VENKATARAMANI:** The first part of it, is as it was, in the 1982 Act, so, at page 701, the
17 definition of Industry, the first part of it, I may call it is *pari materia* of the 1982 Amendment
18 Act, and that's again 140, of the **Bangalore Water Supply**. But then here, after that, but
19 does not include, we also have a non-inclusion, exclusion clauses, but this exclusion clause is
20 not the same as what 82 amendment sought to bring. It is a little narrow, but I think it's also
21 important to keep it in mind. So it says, "but does not include institutions owned or managed;
22 or organizations only or substantially engaged in a charitable, social or philanthropic service.
23 Then, two, any activity of the appropriate Government relatable to the sovereign functions of
24 the appropriate Government, including all the activities carried on by the department, Central
25 Government dealing with Defence Research, so and so; or any Domestic Service; and any other
26 activity, as may be notified by the Central Government". I think, the Parliament has gone in a
27 way to say, if, from time to time, if there is a need to going by these principles, and by any other
28 principles which the State may consider important, and relevant, they may be notified.
29 Otherwise, they may still say, it can be an Industry, it may not be an Industry. Therefore these
30 clauses, of course, occur in many legislations, but in the context of a law like this, it has taken
31 the colour from the other part of the definition. Therefore, that's the statutory scheme as it
32 exists today.

1 So, if in the keeping this in mind, let me take Your Lordships to the **Bangalore Water**
2 **Supply** itself. That's at Volume 5B, the judgment begins from page 4. May I invite Your
3 Lordship's attention to an introductory paragraph, where the Court finds, at page 19 of the
4 judgment, paragraph 4? "Though the tailoring of a definition either sole forensic job in this
5 batch of appeal, dependent on which perhaps a few thousand other cases await decision, the
6 cycloramic semantics of the simple word, 'Industry' and the judicial gloss on it in a catena of
7 cases, have led to the avoidable glut of labour litigation, where speedy finality and working
8 criteria are most desirable, and this delay in disposal of thousands of disputes and consequent
9 partial paralysis in the industrial life is partly blameable on the absence of mechanism,
10 communication between the court and the lawmaking chamber."

11 Cycloramic means a 360-degree, panoramic view. That's what it means. Kindly turn to
12 paragraph 18. Kindly turn to paragraph 13 at page 21.

13 **CJI SURYA KANT:** Yes. Look at the definition.

14 **R. VENKATARAMANI:** Yeah, look at the definition. "Dictionary in hand, decisions in head,
15 and Constitution at heart, leads to some sheer characteristics of an Industry, narrowing down
16 the twilight zone of a turbid controversy. An Industry is continuity, is an organized activity,
17 either purposeful pursuit, not any isolated adventure, desultory excursion or casual, fleeting
18 engagement motivelessly undertaken. Such is the common feature of a trade, business calling,
19 manufacture, mechanical, handicraft-based service, employment, industrial occupation, or
20 avocation". I find that these propositions have been picked up from **Hospital Mazdoor**
21 **Sabha**, and then earlier judgment in **Nagpur Corporation**. I'll come to them later.

22 Then paragraph 14. "Likewise, an Industry cannot exist without a cooperative endeavour
23 between Employer and Employee. No Employer- no Industry; no Employee- no Industry. Not
24 as a dogmatic proposition in economics, but as an articulate major premise of the definition
25 and scheme of the act, and as a necessary postulate of the industrial disputes and statutory
26 resolution thereof. An Industry is not a futility but geared to utilities in which the community
27 is concerned, and in this mundane world where law is now economic utilities, material goods
28 and services, not transcendental files nor intangible achievements, are the functional focus of
29 Industry. Therefore, no temporal utilities, no statutory industries axiomatic. If society is
30 advanced, experience subtle realities and assigns values to them, jurisprudence may reach out
31 to search collective good. Today, not tomorrow, is the first charge of pragmatic law so and so.
32 So, we confined to material not ethereal end products." And these are... these paragraphs 13,
33 14 and 15 ultimately get coined as a triple test formula in paragraph 140.

34 Let me go to paragraph 18. And before I read paragraph 18, what, of course, obviously,
35 prompted the dialogue, the court says... the last few lines in paragraph 17. "The betterment of

1 the workmen's law, the avoidance of outbreaks blocking production, and just and speedy
2 settlement of disputes, concern the community in trade and business goods and services for
3 the community, not for self-control". Then para 18. "The penumbral area arrives as we move
4 into the outer other essentials needed to make an organized, systematic activity, oriented and
5 productive collaboration between employer and employee and Industry as defined in Section
6 2(j). Here we have to be cautious not to fall into the trap of definitional expansionism
7 bordering on *reductio ad absurdum*, not to truncate the obvious amplitude of the provision,
8 to fit into a mental mold of beliefs and prejudices and social philosophy conditioned by class
9 interests. Subjective wish shall not be father to the forensic thought, if credibility with a
10 pluralist community is a value to be cherished. Courts do not substitute their social and
11 economic beliefs for the segment of legislative bodies. Even so, this legislation has something
12 to do with social justice between the haves and the have nots. And naive fugitive and illogical
13 cutbacks on the import of Industry may do injustice to the benignant enactment. Avoiding
14 *Scylla and Charybdis*, we proceed to decipher the fuller import of the definition. Your
15 Lordships know, *Scylla and Charybdis* means two dangerous; between two dangerous things,
16 the devil and the deep sea. So, avoiding *Scylla and Charybdis*, we proceed to decipher the
17 import of the definition. To sum up, the personality of the old statute be remembered as a
18 welfare basis, it being a beneficial legislation which protects labour, promote their
19 contentment, regulates situations of crisis and tension of production, may be imperilled by
20 untenable strikes and blackmail lockout. The mechanism or the act is geared to conferment of
21 regulated benefit of the workman and resolution according to a sympathetic rule of law of the
22 conflicts actual potential between management and the workman. His goal is amelioration of
23 the conditions of workers tempered by a practical sense of peaceful coexistence for the benefit
24 of both, not a neutral position but restrains and *laissez faire* and concern for the welfare of the
25 weaker lot.

26 Then few lines later, this certainly does not mean, that we should strain the language of the
27 definition to import into it what we regard as desirable, in an industrial legislation where we
28 are not legislating *de novo*, but construing an existing act. Crusading for a new type of
29 legislation with dynamic ideas and humanistic justice an industrial harmony cannot be under
30 the umbrella of interpreting an old, imperfect enactment. The court thinks that 2(j) was an
31 imperfect enactment. I only want to keep this in mind when you're going to... going beyond
32 the reach of 2020, the new enactment has come. The imperfect enactment has now been
33 substituted what Parliament thinks, either possibly reasonably good enactment.

34 Then kindly turn to paragraph 21. "A cynical jurist surveying the forensics scene may make
35 unhappy comments. Counsel for the Respondent Unions, sounded that note. A plural society
36 with capitalist backbone notwithstanding the innocuous adjective socialist added to the

1 Republic by the Constitution, regards profit making as a sacrosanct value. Elite is
2 professionalism and industrialism insensitive to the weaker, to the worker menace and
3 inclined to exclusive sound and fury of the labour unrest is sanctified by judicially
4 deindustrializing the activities of professional men and interest group to the extent feasible.
5 Governments in a mixed economy, share some of the habits of thought of a dominant class
6 and doctrines like sovereign function which flout economic enterprises run by them come in
7 handy." I thought this is a very broad observation made. Now, the latent law for club life and
8 charitable device in escapist institutions bred by clever capitalism and hierarchical so and so.
9 I'm not... I'm not placing so much emphasis on these aspects, because we are more concerned
10 with the larger canvas.

11 Now the second part of exclusion in the new definition, the same exclusion in the 1982
12 definition, as to those activities relatable to sovereign function will ultimately...

13 **CJI SURYA KANT:** 22 was already referred to by you.

14 **R. VENKATARAMANI:** Right. And page 28, I'll read two paragraphs at page 28. Para 28
15 and 29. "The second, though trite guidance, that we get is that we should not be beguiled by
16 similar words or dissimilar statutes, context, subject matters or socio-economic situation." I
17 think that's a very ideal call. And the same word may mean one thing in one context and
18 another in different context. There is a reason why decisions on the meaning of particular
19 words or collection of words found in other statutes, are scarcely of much value when you have
20 to deal with a specific statute of your own, they may persuade but cannot pressure." But why
21 they say that in the previous page at page 27, paragraph 27, where the court extracts from
22 **Banerjee**. The court begins to deal with **Banerjee** from para 24 onwards. But let me only
23 quickly take Your Lordships through, two extracts from **Banerjee** court set out in paragraphs
24 26 and 27 at page 27.

25 "A panoramic view of the statute and its jurisprudential bearings have been projected there,
26 and the essentials of an Industry decocted. The definitions of 'employers', 'Section 2(g)',
27 'Industry', 'Industrial dispute', 'Workman' or a statutory dictionary, not popular parlance. It is
28 plain, that, merely because the employer is a Government department, or a local body and *A*
29 *fortiori* a statutory boards society, or like entity, the enterprise does not cease to be an
30 Industry. Likewise, what the common man does not consider Industry, need not necessarily
31 stand excluded from the statutory concept, and vice versa. The latter has deliberately drawn
32 wider, and in some respects, narrower, as Chandrasekhara Aiyer, J, has emphatically
33 expressed". Let me read this paragraph. "In the ordinary non-technical sense, according to
34 what is understood by the man in the street, 'Industry' as business, means an undertaking,
35 where capital and labour cooperate with each other for the purpose of producing wealth in the

1 shape of goods, machine tools and for making profits. The concept of 'Industry' in the ordinary
2 sense applies even to agriculture, horticulture, pisciculture, and so on and so forth. It is also
3 clear, that every aspect of activity in the relations of employer and employee exists; that arises,
4 just not that we become in 'Industry' as commonly understood. We hardly think that in terms
5 of an 'Industry', when we regard for instance, to the rights and duties of a master and servant;
6 or of a Government and his secretariat; or the members of the medical profession working in
7 a hospital; it will be regarded as absurd to think so. At any rate, the layman, and according to
8 that, the advancing legal concepts, what's meant by 'Industry' would rule out such
9 connotations 'impossible'. There is nothing, however, to prevent the statute from giving the
10 word, 'Industry' and the word 'Industrial' dispute, a wider and more comprehensive import in
11 order to meet the requirements of rapid industrial progress; and to bring about, in the interests
12 of industrial peace in the economy. A fair and satisfactory adjustment of relation between
13 employers and workmen, in a variety of fields of activity. And it's obvious, that, the limited
14 concept of what an 'Industry' meant in early times, does not yield to apply the enormously
15 wider concept. Just to make in various and varied forms of Industry, so the dispute arising in
16 connection with them might be settled quickly, the dislocation, disorganization and so on so".

17 A few lines later, "the conflicts between capital and labour have now to be determined, more
18 from the standpoint of citizen of contract. Without such an approach, the numerous problems
19 that now arise for solution the shape of industrial disputes cannot be tackled satisfactorily,
20 and, this is why every civilized Government may start as a machinery conciliation officers,
21 boards and tribunals; for the effective settlement of disputes." So, what was in the
22 antechamber of the mind of the Court, was the rapid industrial progress, and all possible
23 emanations, that may happen by rapid industrial progress, and therefore, what should we do,
24 to address the questions of industrial peace".

25 "Now the dynamics of industrial law, even if incongruous with popular understanding, it is
26 first proposition we derive from **Banerjee**. Legislation has to keep in pace with the march of
27 times; and provide for new situation, social evolution, the process of constant growth and the
28 State cannot afford to standstill, without taking adequate measures by means of legislation, to
29 solve large and momentous problems, that arise in the industrial field from day to day,
30 almost".

31 And now, let me take Your Lordships further to paragraph 29 at page 28. Because, look at how
32 the pendulum has been swinging, between, on the one hand with new industrial changes
33 happening across the globe, and ways and means of producing goods and making services
34 available; and also undergoing change. At the same time, para 29, "we only add that the
35 developing countries anxious to preserve the smooth flow of goods and services, and interdict
36 undue exploitation, and toward these since labour legislation enacted under must receive

1 liberal construction to fulfil its role." For, when you talk of a liberal construction, and where
2 will you draw a line? Much later, in the course of the Judgment, even Justice Krishna Iyer says,
3 "how do you draw a line?" It finds fault with the *Hospital Mazdoor Sabha* , wanting to
4 draw a line, and say, "how do you draw a line"? So the drawing a line, is, can be sometimes a
5 miracle, sometimes it's like chasing a chimera. So I'll read a few more paragraphs of this and
6 then try to place my comments.

7 Paragraph 31. At the end after I read many paragraphs from *Bangalore Water Supply*,
8 they are all, ultimately, towards encapsulating what is found in paragraphs 141, 41 and 43.
9 Para 31, "absence of capital does not negative Industry. Nay, even charitable services do not
10 necessarily cease to be Industries; definitionally, although, popularly charity is not an
11 Industry". Interestingly, the learned Judge dealt with a point after enumerating typical
12 municipal activities, he concluded - Some of these functions may appertain to and partake of
13 the nature of an Industry, while others may not. For instance, there is a necessary element of
14 distinction between the supply of power and light to the inhabitants of a municipality, and the
15 running of a charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance,
16 the former might be regarded as Industry but not the latter. The very idea underlying the
17 entrustment of the duties and functions to local bodies is not to take them out of the sphere of
18 Industry, but to secure the substitution of public authorities in the place of private employers,
19 and to eliminate the motive of profit making as far as possible. The levy of taxes for the
20 maintenance of the services of sanitation and the conservancy of the supply of light and water
21 is a method adopted and devised to make up for the absence of capital. The undertaking of the
22 service will still remain within the ambit of what we understand by an Industry, though it is
23 carried on with the aid of taxation, and no immediate material gain by way of profit is
24 envisaged." This is a very powerful statement, but I think, I'll pause here for a minute because
25 both *City of Nagpur* which follows *Banerjee*, and *Banerjee* follows all those earlier
26 Australian judgments which go on to say that municipal activities need not be necessarily kept
27 outside of the purview of an industrial concept.

28 Now if today, the... kindly again read that paragraph, in the middle of the paragraph: "The very
29 idea underlying the entrustment of such duties of function to local bodies is not to take them
30 out of the sphere of Industry, but to secure the substitution of public authority in the place of
31 private Employers." Now we have a long history of municipal corporations both in England
32 and in USA by their private charters given to municipal corporation. You are a body of
33 inhabitants, you have a corporation where you have some charter, you undertake all those
34 activities. But when you move away from a private charter where a body of inhabitants may do
35 whatever they need to fulfil their needs, to a body created under law with a certain
36 constitutionally or legally, you know, created mandate, then would you not think that there is

1 a paradigm shift in the very basis of removing from a privately managed affairs, which is now
2 being managed and discharged by public authorities. So there is somewhere, I find in the
3 course of the discussion, both in the *City of Nagpur* and in *Banerjee*, the court falls for a
4 consideration whether it is private or public it does not matter, as long as there is a... it satisfies
5 human needs and wants by whatever arrangement it happens, they will definitely fall within
6 the scope of an Industry. I'll take Your Lordships to Subbarao's judgment in *Nagpur* little
7 later.

8 So, kindly now turn to paragraph 34.

9 **CJI SURYA KANT:** 34 to 44 is in reference to the domestic law at that time. 40 up to
10 paragraph 44, Your Lordships are referring to the previous judgments of this court.

11 **R. VENKATARAMANI:** Right.

12 **CJI SURYA KANT:** And 45 onwards, then there is a reference to the international viewpoint.

13 **R. VENKATARAMANI:** Correct, correct. I thought, I'm going to... for my, for my purposes,
14 I'm not going to focus so much on clubs and associations etc., that's a different footing
15 altogether. My focus is on primarily on these functions which will be now assigned to what
16 constitutionally or legally mandated field of activities. And number one... and number two,
17 where the... both 82... I'm sorry.

18 **CJI SURYA KANT:** Sense of democracy at the grassroot level in terms of constitutionalism
19 now.

20 **R. VENKATARAMANI:** For instance, we have the Eleventh and Twelfth Schedule.
21 Panchayats and Municipalities which are now called upon to discharge several public utility
22 functions. So, my focus mostly on that, but before I go that, I don't think the new code in any
23 way directly or indirectly echoes, I may say that, echoes an anti-working class stand at all. It
24 says, it captures paragraph 140 very, you know, lucidly, at the same time, I want to take some
25 kind of concern to say what would not necessarily fall into a definition of Industry, the kind of
26 sovereign function that it says activities relatable to sovereign function. The new code could
27 have gone into *Bangalore Water Supply* or any treaties and what is sovereign function
28 today, but it does not do that. It cannot, possibly, a legislature could not have enumerated what
29 for all timeframe would be a sovereign function. And therefore, it says sovereign function,
30 activities relatable to sovereign functions. Therefore, that be an outer fringe. The penumbra of
31 sovereign function where an outer fringe of activities may also be so relatable and therefore,
32 would not be included. Now for the new code, I find as very carefully guardedly, word...
33 phrased this definition. So, please keep that in mind.

1 And we go to para... I want to read a few more paragraphs to find out why is there a running...
 2 common running thread. There on common running thread as we find in the ultimate
 3 paragraph as is mentioned is, systematic activity, no doubt, no difficulty at all. Employer-
 4 employee, can't be any difficulty. And then, there is no profit motive; there is some issue
 5 somewhere. So when you come back to paragraph 140, where it talks about distribution of
 6 goods and services. So, distribution of goods and services is a grey area, where we can have a
 7 room for disagreement and what kind of services and what kind of service. Suppose, I have a
 8 ICMR and then there are even rice research. So, the areas of research where they are directly
 9 geared to a certain supply of services directly or indirectly, and to enhance let us say
 10 community health. We have hundreds and hundreds of programs today, both at the central
 11 and state government level, towards child nutrition and then for instance and maternity
 12 benefits so on and so forth. I got a large number of lists of those programs and they are meant
 13 to be in support of advancing many provisions, the directive principles of state policy. So, we
 14 have those difficulties when we talk of production, distribution of goods and services. That's
 15 why I was trying to tell Your Lordships, that the word 'undertaking', has probably led to a large
 16 amount of discussion on whether somebody... some activity would be an undertaking or not,
 17 and there you again fall into the *noscitur a sociis, ejusdem generis* and let me please keep all
 18 that in mind. Paragraph 34 at page 30. In short, trade embraces functions of local authorities,
 19 even professions, thus departing from popular notes. Another facet of the controversy is next
 20 touched upon that is profit making is not a *sine qua non* of Industry functionally or
 21 definitionally. For this, powers J in federal municipal so and so, so and so consider an
 22 industrial with empirical approval with the Australian High Court, considered an industrial
 23 legislation. Then, I'll read it a little later because when you talk about ***Municipal City of***
 24 ***Nagpur*** and ***Banerjee*** this may have some bearing.

25 **JUSTICE DIPANKAR DATTA:** Para 44 ***Nagpur*** discussed...

26 **R. VENKATARAMANI:** Yes, paragraph 38...

27 **JUSTICE DIPANKAR DATTA:** 44...

28 **R. VENKATARAMANI:** 37 and also 38 because the court enters into a little a dense domain
 29 of drawing lines, but then it does... it does draw lines. Para 38. Yes, para 37. "The limiting role
 30 of ***Banerjee*** must also be noticed, so that a total view is gained, for instance analogous to
 31 trade or business, cuts down undertaking a word of fantastic sweep. Spiritual undertakings,
 32 casual undertakings, domestic undertakings, war raging, polishing, justicing, legislating, tax
 33 collecting and the like or *prima facie* pushed out. Wars are not merchantable nor justice
 34 saleable nor divine grace marketable so the problem shifts to what is analogous to trade or
 35 business. As we proceed the next set of cases, we come upon the annotation of other

1 expressions like calling and get to grips with a specific organization, which calls for
2 identification as several appealed before us."

3 Fortunately, as we see the new code, it doesn't borrow the old code trade business undertaking
4 etc. It now essentially takes into account what is available in paragraph 140. Therefore post
5 the new code recourse now what will be an undertaking, need not deter the code, unless by
6 forensic ingenuity at the bar we try to bring it back and say well undertaking can always be
7 loomed large behind the definition of Industry even in the new code. So, I read paragraph 38
8 now. "At this stage, a close up of the content and contours of the controversial word analogous
9 etc., which have consumed considerable time of counsel may be taken. To be fair, the
10 pathfinding decision which conditioned and canalised, and fertilized subsequent juristic
11 humanistic ideation, we must show fidelity to the terminological exactitude of the seminal
12 expression used and search carefully for its import. The precise words are, branches of work
13 that can be said to be analogous to the carrying out of a trade or business. The same judgment
14 is negative, the necessity for profit motive and included charity impliedly, has virtually equated
15 private sector and public sector operation, and has even perilously hinted at professions being
16 placed in this perspective, the comprehensive reach of analogous activities must be measured."

17 "I asked myself the question, is it possible for the Code to have such a measure at all, except to
18 a certain limited and agreeable extent, where that can be a broad agreement?" "That the
19 similarity stress relates to the branches of work and more the analogy with trade or business,
20 is in the carrying out of the economic adventure. So the parity is in the *modus operandi*, in the
21 working, not in the purpose, or of the project, nor in the disposal of the proceeds; but in the
22 organization of the venture, including relations between the two limbs, namely labour and
23 management".

24 I think that is why in the new Code, this aspect of the definition, which is sought to be filled in
25 here, is very wisely avoided. If you look at parity, is in the *modus operandi*, not in the purpose
26 of the project, nor in the disposal of the proceeds; but in the organization of the venture. So
27 you can probably bring in many things by applying these very widely stated proposition. "If
28 the mutual relation, the method of employment and the process of cooperation in the carrying
29 out of the work bear close resemblance to the organization, method, remuneration,
30 relationship of employer and employee, and the like; then it is an Industry, otherwise not. An
31 activity oriented, not motive based analysis".

32 Is it, I sometimes wonder, with all humility to the learned Judge, whether this is not motive
33 based analysis, is also a very sweeping proposition? Then we have a paragraph 44, at page 34.
34 But I think it's also useful to read the previous paragraph, at the top of the page, page 34, the
35 previous paragraph, 43. It begins like this. "Filling the gaps in the **Banerjee** decision, and the

1 authoritative connotation of the fluid phrase, analogous to trade and business, where
2 attempted to restrain decisions to be analogous, is to resemble in function, relevant to the
3 subject, as between, like features of two apparently different things. So, some kinship through
4 resemblance of trade of business, is a key to the problem... is a guide star. Partial similarity
5 postulates selectivity of characteristics for comparability, wherein, lies, the analogy to trade or
6 business is then the query." As a Court further to get on into the query, I think the query is
7 only partly answered, because the query could not be finally answered at all. The query could
8 be answered on a given set of factors which present, unless, we have some fundamental
9 postulates, on which there can be no disagreement whatsoever, as to what would constitute an
10 'industrial activity'. That's why I think, both the 1982 and the new Code picked up 140,
11 paragraph 140. So, those postulates are very clear. In the context of a trade, or a business, or
12 any similar activity, you will have a systematic activity; an employer and employee; and the
13 production or distribution of goods or services. But then, if you look at, pick up any one of an
14 isolation, then there could be a problem. So you look up in isolation, only a production
15 distribution of goods and services, without reference to the other thing, that could be a
16 problem. If you close your eyes to the nature of the activities, then there could be a problem.
17 Therefore, these are important rules, which can be put into a box, which you can, you know,
18 seal them forever.

19 Now let me read para 44, page 34. "That Subbarao, with an inhibited logic, chases this thought,
20 and reaches out in Nagpur Municipality, speaking for a unanimous bench. We respectfully
21 agree with much of his reasoning, and proceed to deal with the decision if the ruling were right,
22 as we think it is, the riddle of 'Industry' is resolved in some measure. Although, foreign
23 decisions, words and phrases, lexical plenty, and definitions from other legislations were read
24 before us, to stress the necessity of direct cooperation between employer and employees, the
25 essential product of the undertaking for the need for the commercial motive of service, the
26 community, etcetera. As implied inarticulately, to the concept of Industry, we bypassed them,
27 but marginally persuasive. The rulings of this Court, the language of the scheme of the act, and
28 the well-known canons of construction exert real pressure on our Judgment. And in this later
29 process next to *Banerjee* comes *Corporation of Nagpur*, which spreads the canvas wide
30 and eliminates the expression, 'analogous to trade of business', although it comes a few days
31 after *Hospital Mazdoor Sabha* decided by the same bench."

32 After quoting at page 45... Sorry, page 35, quoting from an ILO on Freedom of Association at
33 the at page 47 of the... at page 35. "This divagation was calculated only to emphasize certain
34 fundamentals in the international industrial thinking which accord with the wider conceptual
35 acceptance for Industry. The wings, the word 'Industry' have been spread wide in Section 2(j)
36 and has been brought out in the discussion in *Corporation of Nagpur*. That case was

1 concerned with a dispute between a municipal body and its employees. The major issue
 2 considered, there was a meaning of the much-disputed expression, analogous to the carrying
 3 on of a trade or business." We find that the text itself did not have that word. Therefore, when
 4 you want to read what the meaning of an undertaking, you have to find out some kind of a
 5 textbook to find out what expressions, words and principles can be used for the purpose of
 6 determining what is undertaking. "Therefore, the major issue considered was the meaning of
 7 the much-disputed expression,' analogous'. Municipal undertakings are ordinarily industries
 8 as **Baroda Bohra Municipality** held." Just make a note here. **Baroda Bohra**
 9 **Municipality** follows **Banerjee**, "...and even so, the scope of Industry was investigated by
 10 the bench in the **City of Nagpur** which affirmed **Banerjee** and **Baroda**. The court took the
 11 view that the words used in the definition of *prima facie* are the widest import, and declined
 12 to curtail the width of meaning by invocation of Nazi terror sources. Even so, the court was
 13 disinclined to spread the net too wide by expanding the classic expressions calling service,
 14 employment and handicraft. To be over inclusive may be impractical, and so while accepting
 15 the enlargement of the meaning by the device of inclusive definition, the court cautioned, but
 16 such a wide meaning appears to overreach the objects for which the act was passed. It therefore
 17 is necessary to limit its scope on permissible grounds having regard to the aim, scope and
 18 object of the whole act." If therefore, the court was looking at calling service, employment and
 19 handicraft not to be widely seen, I suppose, even the word,' undertaking' which must take
 20 colour from trade, business, etc., if you spread the net very wide, and for that purpose you call
 21 what is analogous to trade and business, and therefore that's a problem where this court tries
 22 to face and tries to answer his own independent way.

23 Then paragraph 51. Para 50, at the at the bottom of page 36. "The court proceeded to carve out
 24 the negative factor, which, notwithstanding the literal width of the language the definition
 25 must, for other compelling reasons be kept out of the scope of Industry. For instance, sovereign
 26 functions of the state cannot be included, although what such functions are, has been aptly
 27 termed the primary and inalienable functions of a constitutional government."

28 **CJI SURYA KANT:** You need not to go into these. At that time, whatever the globally the
 29 jurisprudence was developing, that has been referred to, so you take note of that.

30 **R. VENKATARAMANI:** Yes.

31 **CJI SURYA KANT:** Come to the conclusion and then we would like to have your own notes
 32 here, in the sense, to...

33 **R. VENKATARAMANI:** No, I thought, a little more reading, I'll conclude. Because it goes,
 34 it goes on how to iron out the creases and what is felt the absence of certain factors in the
 35 definition. And then the court says, what is the statute we are looking at? It is a worker welfare-

1 oriented statute, and therefore, the purpose of the act must be so fulfilled in order that I do
2 not truncate the mission of the Act. So while doing so, whether the court probably drew a line
3 somewhere, which continued activities would not be in the nature of an undertaking analogous
4 to trade or business, and also while looking at functions which are now essentially what I may
5 call, 'constitutionally mandated public purpose activities', which are now drawn through
6 different parts of our Constitution, and most importantly, we say in the Schedule 7, the
7 allocation of legislative functions and administrative executive functions.

8 You find a whole lot of them, which perhaps would not fit in with the old narrow concept of
9 sovereign functions, inalienable etc. For the concept of sovereign functions, even though it has
10 been retained in the new code, it will receive its colour from a entirely new conceptual way of
11 understanding, those, what I would call again repeatedly constitutionally mandated fields of
12 activities where, the determination as to what... in what way I will exercise these activities, in
13 what way to pursue these activities and in what manner for the purpose of executing them, I
14 will have a certain framework. It could be an establishment, it could be directly done, it could
15 be indirectly done. Therefore, when we enter into that to say that, in paragraph 50, when I said
16 the primary end inalienable functions of a constitutional government, we go back in point of
17 time to what was originally an international law, sovereignty concept and again between state
18 and state, or we again fall back in the judgement I will read from **Nagendra Rao**; in the field
19 of civil law thoughts, we have moved away far away from the active principle therefore the
20 state is liable for a wrong committed by a servant or an employer, but they are in the field of
21 civil wrongs. But, when we come to an entirely different domain of activities where in the
22 exercise of his I said constitutionally dictated functions, whether you could probably truncate
23 and confine... a cabin confine they may call it, the sovereign functions aspect and go back on
24 very historically outdated understanding. That's why I thought I will read paragraph 50.

25 Kindly turn to paragraph 51. I'll quickly read through some of them. 51, "Although we are not
26 concerned in this case with those categories of employees who particularly come into the
27 department charged with the responsibility."

28 **JUSTICE B. V. NAGARATHNA:** All these paragraphs are ultimately crystallized in
29 paragraph 140, 141 onwards.

30 **R. VENKATARAMANI:** Correct, correct. It crystallises. This I thought some.

31 **JUSTICE B. V. NAGARATHNA:** Exposition on the conclusions of the judgment.

32 **R. VENKATARAMANI:** I'll immediately come to that, but why I thought some paragraphs
33 need to be read is, what was the thought process which went into the mind of the court in
34 saying that, what do you pick up from each one of the judgment do they have a connecting

1 thread? Is there a connecting thread available in all these judgments so that ultimately I find
2 out what are those connecting threads, which I can cull out as principle for the determination
3 or the definition of Industry? So these are very important milestones which the court crossed.

4 **CJI SURYA KANT:** Just highlight them, that's all.

5 **JUSTICE B. V. NAGARATHNA:** 140... paragraph 140 are [UNCLEAR].

6 **R. VENKATARAMANI:** I will come to paragraph 140. Page 73. Page 73: Industry as defined
7 in Section 2(j) and explained in... So these are three principles which the court culls out from
8 these decisions as on their analysis, but then (b), (c), (d), I think let us look at it. Absence of a
9 profit motive or gainful objective is irrelevant, be the venture in the public, joint, private and
10 other sector.

11 Sub para (c) seem to introduce a little nebulous, sure, and probably it dilutes the other three
12 earlier parts, "the true focus is functional and the desired test is the nature of the activity, with
13 special emphasis on the employer-employee relationships. And if the organization is a trade
14 or business, it does not cease to be one, because of philanthropy animating the undertaking".

15 Then para 141, "Although Section 2(j) uses words of the widest amplitude in its two limbs, the
16 meaning cannot be magnified to overreach itself". Then (a), "Undertaking must suffer a
17 contextual and associational shrinkage, as explained in *Banerjee*," and so also", I think that
18 is, *Banerjee* perhaps, does not go on the same wavelength as this. "So also service calling and
19 the like. This yields the inference that all organized activity possessing the triple elements in I
20 (supra), although not trade or business, may still be 'industry' provided the nature of the
21 activity, namely, the employer-employee basis bears resemblance, to what you find, in trade
22 or business. So do we have a magic test to do that? On the one hand, it says, "well, yes though
23 triple test is equal," but the other hand the Court goes on to say, "probably the employer-
24 employee basis in every such activity, beyond or even a trade, there will be some employer
25 some employee". "So that seems to have brought in a greater emphasis and focus on this
26 nature, and the employer-employee basis bears resemblance to what you find in trade and
27 business". There can be, today activities where the resemblance may be completely absent, but
28 there is some employer-employee relationship, and there could be an organized activity. "And
29 this takes into the field of fold of Industry undertakings, callings and services, adventures
30 analogous to their carrying on, on the trade of business". So in his anxiety to leave no room for
31 any doubt, Krishna Iyer just goes on to say, "adventures analogous to the carrying on of trade
32 and business". So all features, other than the methodology of carrying on the activity, namely,
33 the organizing the cooperation between employer and employee, which is similar, it does not
34 matter, if on the employment terms there is analogy. So, ultimately, this seems to be the

1 fundamental premise or thread which will inform any discussion even in future, on what would
2 be an Industry notwithstanding the departure in the new Code.

3 Now 142, "Application of these guidelines should not stop short of their logical reach, by
4 invocation of creeds, colours or inner sense of incongruity or outer sense of motivation; for the
5 resultant of the economic operations. The ideology of the Act being Industrial peace
6 regulation, resolution of Industrial disputes, and employer and workmen, the range of the
7 statutory ideology; must inform the reach of the statutory definition, nothing less, nothing
8 more. The consequences are professional clubs, educational institutions, cooperatives,
9 research institutes, charitable projects and other kinder adventures. If they fulfil the triple test
10 listed in so and so, cannot be exempted from the scope of Section 2(j)". There's some kind of
11 circularity I find here because I said, Employer- Employee nature will be important, then even
12 if the other three tests are not so important.

13 "Now, if in a restricted category of professions clubs, cooperatives and even gurukulas, and
14 little research labs may qualify for exemption, even simple venture, substantially and going by
15 the dominant nature criteria, substantively no employees are entertained but in minimal
16 matters, marginal employees are hired without destroying the non-employee character of the
17 unit."

18 I pause here for a minute. There have been cases where under the Contract Labour Act, so it's
19 been alleged that Employees in order to avoid the Contract Labour Act implications and
20 application, you employ persons less than ten, so the act does not apply. These are devices. Of
21 course, those devices will always be identified and said they're illegal. So I don't know whether
22 that will probably help us anyway here. "If in a pious or altruistic mission many employ
23 themselves, free or for small honoraria, or likely return mainly by sharing in the purpose or
24 cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their
25 spare hours in a free medical centre or ashramites working at the bidding of the holiness,
26 divinity or like central personality and the services are supplied free or at nominal cost and
27 those who serve are not engaged for remuneration or on the basis of master and servant,
28 relationship, then, the institution is not an industry even if stray servants, manual or technical,
29 are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity,
30 compassion, developmental passion or project."

31 Then, "The dominant nature test where a complex of activities some of which qualify for
32 exemption, others not, involves employees in the total undertaking, some of whom are not
33 workmen as in the *University of Delhi* case or some departments are not productive of
34 goods and services if isolated, even then, the predominant nature of the services and the
35 integrated nature of the department is explained in the *Corporation of Nagpur* will be the

1 true test. The whole undertaking will be Industry, although those who are not workmen by
2 definition, may not be benefited by the status. Of the **Corporation of Nagpur**, virtually
3 every department, every activity of the Department of Corporation of Kanpur including a
4 taxation department, an administrative department, so on and so forth." So, the sword falls
5 very broadly. So, I don't know whether the **Corporation of Nagpur** as in the context of
6 municipal services which now undertake an entirely different hue and colour, should still be a
7 good law.

8 Now," Notwithstanding the previous clauses, sovereign function strictly understood qualify
9 for exemption, nor the welfare activities or economic adventures undertaken by government
10 or statutory bodies." How do we really, therefore, say what is a welfare activity or the economic
11 adventure? So, they will not qualify. So," Even in the departments in discharging sovereign
12 function, if there are units which are industries and they are substantially severable, then they
13 can be considered to come with Section 2(j)." I have no serious disagreement with that
14 question, provided, a particular activity is essentially a trade, business, commerce or Industry
15 within the core meaning of the Act. Then," Constitutional and competently enacted legislative
16 provisions may well remove from the scope of the Act, categories which otherwise may be
17 covered thereby." This is what the new code has done in the penultimate clause. So," We
18 conclude with deference... with diffidence because Parliament which has the commitment to
19 the political nation, to legislate promptly in vital areas like Industry and trade and articulate
20 the welfare expectation, has hardly intervened to restructure the rather..." please mark the
21 word, "... the rather clumsy, vaporous, and a tattered and torn definition or tidy up the scheme
22 although..." Which means, Section 2(j), as it then stood, was a vaporous, clumsy and tattered
23 and torn definition.

24 I think, it will be a little adventurous in part to say that, even though it was clumsy, let us say,
25 but then vaporous because you want to connect trade, business and undertaking. You want to
26 connect and charitable activity.

27 **JUSTICE DIPANKAR DATTA:** See the two lines below. "The court was informed that a Bill
28 is in the offing."

29 **R. VENKATARAMANI:** Correct.

30 **JUSTICE DIPANKAR DATTA:** Right? Therefore, the court had to clear the doubts in
31 present time.

32 **R. VENKATARAMANI:** I'm not disagreeing on that question. I'm not saying anything about
33 that. I am only saying that the court from **Banerjee** onwards, from **Banerjee** onwards, was
34 labouring hard to find, to find out if I can give some electable meanings which will satisfy and

1 the anti-exploitation genius of the Industrial Disputes Act, the anti-exploitation threat, which
2 runs entirely through this Act. So if they're trying to find out what will be all those meanings,
3 which can be probably go into the understanding of Industry because the code find it is clumsy,
4 vaporous and so on and so. Not that I'm happy with this, but of course to a considerable extent
5 the definition has some vague elements. I was recently reading a piece of literature on there is
6 a need for some need or something not to be specified in some parts of law. Room for non-
7 specificity that comes, because if you define too much, if you say too much in a particular word
8 or a or a or an activity or a word or a meaning or a definition, then you stultify what exactly
9 the law will operate. The organic functional operational parameters of a law should be left
10 sufficiently wide enough. That's why they need for we take the word in tort and vicarious
11 liability and how it has evolved over a period of time. Then, when even in this case on
12 municipal sovereign function, the Australian judgement says, "I don't want to use the word
13 sovereign function, we go to the word regal and non-regal function." So you will find some
14 word in English language, we always problems in every language. So how much of it can
15 capture? So we have meanings which a word you know gathers over a period of time. Which
16 meaning will be the most fittest meaning, is always a job of both the legislature and the court.
17 So I think this, it must stop. But I must read to Your Lordships also, what Justice Beg and
18 Justice Chandrachud has said. By and large the judges, both the honourable judges concur
19 with Justice Krishna Iyer. And Justice Beg, just to add...

20 **CJI SURYA KANT:** Justice Beg had...and by and large he had agreed.

21 **R. VENKATARAMANI:** I want to just invite Your Lordships' attention to two or three
22 paragraphs at page 77. Page 77, at that part of para 149, beginning from the previous page, line
23 about five from the top. We have so to speak... let me place my points of view now, one after
24 another. So, we have on behalf of the workers and the working class, rightly so we hear that
25 the **Bangalore Water Supply** is correct law, and that it should be applied expansively.
26 Notwithstanding the new code, and that sovereign functions must be read restrictively; that
27 one voice it will be heard. Then, on behalf of the state body, I find there are five, six states
28 which are here, where they are concerned with the forest department, irrigation department
29 etc. being declared Industry and things like that. So, on behalf of the states the submission will
30 be the triple test in **BWS** is wrong, and therefore sovereign function should be read
31 expansively. Then we also have charitable institutions like **Pinjrapole**. I could take Your
32 Lordships to the **Pinjrapole** judgement with a lot of interest. So charitable institutions and
33 research institutions, like many of them are here. Like a space research, then ICMR and here
34 they do not fulfil the triple test and therefore the application of triple test to them shows too
35 overbroad. So we have three broad, three facets of this, so, I think, as far as the Union is
36 concerned, that the, as I analyse more and more, the Triple Test, the tests are the factors which

1 are interpreting the definition of Industry as proposed by **Bangalore Water Supply** are
2 logically correct; because you picked up from various Judgment, namely employer-employee,
3 right, that must be a organized activity, there must be a production of goods and services.
4 Therefore, to that extent is logically correct, and thus, cannot be said it has an inherent logical
5 fallacy. But, nevertheless, the problem arises, not in the question whether they're logically
6 correct or not, nevertheless, the application of these tests are factors. In, as proposed by the
7 majority in the **Bangalore Water Supply** , I say has been probably is too overbroad. In
8 **BWS** itself you will find it; and therefore an indiscriminate application of it leading to a over
9 inclusion of activities, within the ambit of Industry, is going to be problematic. And, therefore,
10 the Court is now probably called upon to clarify the application of these tests and factors,
11 especially in the context of activities carried on by the State and other Municipal Bodies.

12 May I continue after?

13 **CJI SURYA KANT:** How much time? Because, we had given...

14 **R. VENKATARAMANI:** In an hour.

15 **CJI SURYA KANT:** The petitioner said we had four hours, two and a half are gone and...

16 **R. VENKATARAMANI:** I'll conclude in an hour's time, I thought by placing this very broad
17 proposition, many, many concerns...

18 **CJI SURYA KANT:** They need not to read out now Judgments and all these things, they can
19 straight come to their points, will 10-15 minutes be fine with you?

20 **R. VENKATARAMANI:** Yes. We have placed a written submission, all the judgments are
21 there, now I just need...

22 **CJI SURYA KANT:** 10 to 15 minutes?

23 **R. VENKATARAMANI:** Maximum. I will try to conclude within an hour. I'll try to be as
24 brief as possible.

25 **CJI SURYA KANT:** Please, because in para 485...

26 **R. VENKATARAMANI:** I understand.

27 **CJI SURYA KANT:** ...of our Order of 16th February, we have fixed a timeline. We will
28 request the Parties to adhere to that. Thank you.

29 **CJI SURYA KANT:** Only one second. You see, when we were requesting before lunch that
30 all of you are requested to adhere to the time schedule, the further most important reason is
31 that two very eminent senior advocates who are domain experts. Two very eminent senior

1 advocates and who are well known as domain experts, they have very kindly agreed to assist
2 us as *amicus* in this matter.

3 **R. VENKATARAMANI:** Yes, yes.

4 **CJI SURYA KANT:** So, we at the outset express our gratitude sincerely to J. P. Cama, Senior
5 Advocate, Bombay High Court and Shri P. S. Sengupta, Senior Advocate from Calcutta High
6 Court, who both have very graciously decided to assist this court as *amicus*. So, we will spare
7 some time to sum up from both sides, what is the true import and...

8 **R. VENKATARAMANI:** Like an obedient student.

9 **CJI SURYA KANT:** You can sum up learned...

10 **R. VENKATARAMANI:** Like an obedient student I'll try to conclude as early as possible.

11 **CJI SURYA KANT:** Yes, thank you.

12 **R. VENKATARAMANI:** So I don't propose to read the *BWS in extenso* again, that may not
13 be required but in terms of the issues which Your Lordships have framed and as I said, the
14 Issue No. 1 broadly, my views are like this that the triple test and the dominant nature test are
15 factors which are in itself a good test to determine whether an activity may be categorized in
16 Industry under Section 2(j) of the 1947 Act. However, caution must also be exercised while
17 applying these tests and principles, as not everything that answer the triple test ought to be
18 considered as Industry.

19 Then, it is important that the court struggled with the question of what could be included and
20 what should be excluded. So, the court is also trying to find out, can I locate some norms or
21 criteria of both for inclusion, exclusion? The court found a difficult task. Ultimately it was left
22 to the legislature to do that. Therefore, certainly certain other factors besides the triple test
23 would have to be necessarily, if they're relevant in due consideration, we have to be given to
24 them, while alongside the dominant test and the functional tests as well, so that there is no
25 overbroad and indiscriminate application of the triple test principles. Then also since the court
26 underwent the whole exercises of considering undertaking with the analogous to trade or
27 business, and weightage must be given to whether it is... the analogous is a very difficult, it's
28 like a quagmire, you can't probably, quick sand, it can pull you down. So let's be very careful
29 about it.

30 Then on Issue No. 2, when the Government undertakes several activities which are
31 constitutionally mandated field of activities in furtherance of public welfare and public need.
32 For instance, we have all those cases, we have forestry, I'll read out that *Kondhare* judgment
33 which is a very classic case, but I understand Ms. Indira Jaising appeared, Mr. Dholakia

1 appeared, namely forestry, irrigation, health, education etc. and the list could be endless. So
2 they cannot be excised *prima facie* presumed to possess the elements of trade, business or
3 commerce and therefore the *simpliciter* application of the triple test in para 140 could be open
4 to question.

5 Then the... on Issue No. 3 the **Bangalore Water Supply** has gone by very bygone principles
6 of a sovereign functions and sovereign powers. Therefore, that conventional bygone
7 understanding will not necessarily inform the court either in looking at **BWS** or even the
8 current code for the modern constitutional welfare state carries out various functions and
9 activities that may not be limited to traditional sovereign functions, and then sovereign
10 functions are evolving in over a period of time. Then ultimately the executive My Lord, Justice
11 Nagarathna put a question LPG. Now in the context of changing in the economic situation in
12 our country globally and also, so what in the early 60s and 70s our Government thought
13 occupy industrial space by nationalisation. So we had coal, iron, all those activities were
14 nationalized and industries were set up, factories were set up. So that when you are departing
15 from that and the more of them today are in a private sphere, there is no difficulty as to
16 whether those private spheres are industries or not. But if there are certain activities which are
17 like a regulatory aspect, the regulatory aspect and the state will determine how far the
18 regulatory aspects are important and the course of discharging those regulatory aspects is the
19 state will have employer-employee relationship. Well you see because of that factor alone, a
20 regulatory aspect being determined set up by an establishment, it could be a facilitating
21 initiative. So it's very difficult to draw a line saying in the regulatory aspect facilitating all will
22 now go because employer-employee is there, therefore you will be in Industry. That could be
23 a very problematic area and therefore for... to that extent **BWS** can be extended
24 indiscriminately or without any moderation, there could be an issue.

25 Then that's how I think I would answer these three questions. Then kindly may I request Your
26 Lordships to... since the second part of the first question, please turn to my written
27 submissions at page 81, because I was trying to understand and comprehend the relevance
28 and importance of the second part of the first question, which said, the impact of the 1982 Act
29 and the 2020 code. So what kind of an impact these two legislative instruments can have on
30 **Bangalore Water Supply**? So, we have all those plethora of judgments which say that if a
31 earlier law which is ambiguities and lot of issues regarding interpretation, open to multiple
32 readings, multiple interpretations, then a law on the same subject or even a cognate subject
33 which comes later can throw considerable light on the reading and interpretation of an earlier
34 law where within quotes, "is open to multiple or various interpretations readings". I'll place
35 some judgments to that effect. Kindly come to paragraph 81, sorry, in the written submission.

36 **CJI SURYA KANT:** Paragraph?

1 **R. VENKATARAMANI:** Sorry, page 81. Page 81, paragraph 108. It is with reference to the
2 second... the question whether the two Acts. In answer to the question... second question...
3 second part of the first question, the submissions begin at page 79, but I propose to read at
4 page 81.

5 **CJI SURYA KANT:** Are you reading after the reproduction "it is submitted that"?

6 **R. VENKATARAMANI:** Yeah, page 81, paragraph 108. 107 is... yes, yes, that's right. "It is
7 submitted that it will be always open to Parliament to depart from the declaration of law in
8 ***Bangalore Water Supply*** and to provide for appropriate legislative framework to deal with
9 the distinct categories class of employment and services and also to provide for suitable
10 dispute resolution processes. The exclusion set out in 82 Amendment the intent to remove
11 various activities whether by way of production of goods or services from the scope of
12 application, in order that or with a view that such enumerated exclusion deserve to be dealt
13 with under some other legal framework. Placed on record that on 12th of August 1986, the
14 following questions read in Parliament. Then the Ministry of Labour will be pleased to state,
15 whether in November 1985 then so-and-so had indicated that government was considering to
16 enforce the definition of the term Industrial Zones Act. The answer is like this. In his letter
17 dated 30th of November 1985, the Honourable member, the then Minister of Labour had *inter*
18 *alia* stated that a Bill had been introduced in Parliament to provide an alternative grievance
19 redressal mechanism for the employees of hospitals, dispensaries, educational, scientific
20 training institutions etc. who are being excluded from the coverage of the Industrial Disputes
21 Act and this has not been finalized. It's not possible at this stage to indicate the time taken in
22 finalizing the matter. No estimates in respect of employees which would be affected are
23 available. We may notice that the debates in Parliament during the introduction of the 1982
24 Amendment with the intent to provide special legislation for exclusive categories of
25 employment. The relevant portion of the debates is reproduced here under Page 82.
26 Government have received representation that we are unduly restricting the scope of the Act
27 by excluding certain categories of employees from within the purview. On numbers will
28 appreciate that there is an inherent difference between undertaking which in the commonly
29 understood language fall within the definition of Industry and between hospitals, educational
30 institutions and research organizations. Although we have excluded these categories, the idea
31 has not been to take away workers' rights in these sectoral activities. Because by and large we
32 have provided an alternative grievance redressal machinery in the hospital and the institution
33 will show a redressal. We have received requests from several institutions and organizations
34 engaged in sectoral activities which come in the list of excluded categories requesting to
35 specifically exclude them from the purview of so-and-so, so-and-so." Then next paragraph,
36 "the criticism is raised regarding the second part that it does not include institutions like

1 hospitals, educational scientific research, training institutions and such other institutions. In
2 this connection, I would submit to you that through, and through you to the House that an
3 establishment in Faridabad or a jute mill in West Bengal cannot stand and should not stand
4 in the same footing as a hospital or university. In an atmosphere of a hospital, the interest of
5 the patient is there, in an atmosphere of university the interest of students ought to be
6 safeguarded. This does not for a moment mean that the management of any institution can go
7 scot-free, if any action is taken by them, which is detrimental to the interest of the workers.
8 Therefore, I compliment the government for having already introduced a Bill to deal with
9 similar matters and such institutions excluded so-and-so. In this bill, hospital, dispensaries,
10 scientific research institutions, educational as also charitable trusts have been exempted from
11 the provisions of the bill, but I demand that the interest of the employees' institutions should
12 be looked after by government in whatever manner they like proper and suitable. Similarly,
13 atomic plan the defence research institutions have been taken out of the orbit of this law. It is
14 stated that the government would bring forward a special legislation for the protection of
15 employees in these institutions appeal so-and-so." That's how this hanged on for a long time.
16 So, there was a para 111. "However, as seen above, the exercise did not fructify and the
17 Amendment was not notified and brought into force. The Amendment remained as a stillborn
18 law. However, even in such cases notwithstanding notification of an Amendment, alteration
19 in the law, parliamentary intent behind the Amendment will sail along with the purpose
20 behind the Amendment itself. Consequently, there is some room for an argument that the 1982
21 Amendment may be used as an interpretative tool for the application of the test laid down in
22 ***Bangalore Water Supply*** to the excluded categories." That's the open question, but I
23 thought that's one way of putting it. The Industrial Relations...

24 **JUSTICE B. V. NAGARATHNA:** For educational institutions there are the State Education
25 Acts where they provide the Tribunal with regard to dismissal, reduction in rank, termination,
26 discharge, labour you see problems. Not labour exactly, the employees' problems. Yes,
27 education service, yes.

28 **R. VENKATARAMANI:** Every state has got you know, education code, governs, teachers,
29 schools, colleges. So, to that extent, there is a mechanism available for reversal of grievance.
30 So, then I further read. There's one judgment I would... a couple of judgments I would like to
31 place to Your Lords with consideration in this context. Is it available in the court?

32 There is considerable literature and judicial precedence on the subject as to whether if there
33 is, as I said earlier an amendment or a new law and it finds that an earlier law has considerable
34 ambiguities, open to multiple interpretations and the later law tries to navigate those problems
35 and it offers a way of looking at an earlier law. The court always says the later law, by way of
36 whatever amendment or otherwise, can all be looked into as an interpretative guide, not

1 necessarily a final say on the subject but it will say, therefore courts will always use them. There
2 are a number of judgments, only I thought I'll cite one judgment, this **(2014) 9 SCC 2121**,
3 para 9. The question here is what within the Arbitration Act of 1940 and the subsequent
4 amendment, kindly turn to paragraph 9 at the page 219 of the Report. Just around Placitum
5 E, paragraph 9, "the change in the legal approach towards arbitration and alternative dispute
6 resolution mechanism is perceptible both in regard to the requirement of giving reason, etc.
7 While in regard to requirement of giving reason the law has brought the limit, dimensions not
8 found under the old Act, the scope of interference appears to be shrinking in its amplitude. No
9 matter judicial pronouncement at the time appeared to be heading toward the more expansive
10 approach, that may appear to be some, some to be opening up area for judicial review on newer
11 grounds falling under the caption so on so. We are referring to these developments for it is one
12 of the well-known canons of interpretation of statutes, that where an earlier enactment is truly
13 ambiguous, in that it is equally open to diverse meaning. The later enactment may in certain
14 circumstances serve as a parliamentary exposition of the former." Then in para 10 "in
15 **Yogendra Nath**, this court held that a subsequent legislation on the same subject may be
16 looked into with a view to giving a proper exposition of a provision of the earlier act, borrowing
17 the principle so and so reasonable to hold obligation upon Arbitrator."

18 There are two more judgments. Your Lordships will also just make a note of it. I don't propose
19 to trouble reading those. These two judgments, the one is **(1984) 3 SCC 46**, paras 20 to 23
20 in 84, then the next judgment, **(1969) 1 SCC 555**, paragraph 7.

21 Can you get the para numbers? In the first judgment 84, sorry.

22 **CJI SURYA KANT**: In the second one **Ghanshyam**, para?

23 **R. VENKATARAMANI**: Paras 20 to 23.

24 **JUSTICE B. V. NAGARATHNA**: This is referred to in paragraph 9 of the first judgment?

25 **R. VENKATARAMANI**: That's right. Then in the other judgment **(1969) 1 SCC** is
26 paragraph 7. May I proceed further? In the written submissions para 112 and 113, kindly make
27 a note of them. Para 112 is a reproduction of the new code but it says...

28 **CJI SURYA KANT**: Learned Attorney, we will not rely upon the definition in the new Act for
29 the simple reason, as there is already a caveat put in from the other side that there might be a
30 challenge to the 2020 Act.

31 **R. VENKATARAMANI**: That's right.

32 **CJI SURYA KANT**: So, of course, the principles which you have referred to particularly 1969
33 judgment...

1 **R. VENKATARAMANI:** Yes.

2 **CJI SURYA KANT:** This is one of the tools for interpretation.

3 **R. VENKATARAMANI:** That's right. Your Lordships are right. Because when you are
4 confronted with novel areas of debates and disputes.

5 **CJI SURYA KANT:** There are thousands of tools, so this one we might consciously, will
6 intend to skip this because then we don't want to comment on that.

7 **R. VENKATARAMANI:** I agree. That's right. Then para 113, at the bottom of page 83 which
8 I began with my submission in the fore note. "So we'll guide the adjudication of disputes
9 arising pending before so and so. All disputes are governed by the Industrialization Code
10 2020." Then kindly on the sovereign functions, I have some more submissions to make. In my
11 written submissions, how... for long we have been struggling with the question of... in the civil
12 wrongs, vicarious liability, liability and all that and we don't get into that because that happens
13 in an entirely different domain. It may or may not definitely through a light on sovereign
14 function in the context of what do you call, constitutionally mandated activities being
15 undertaken for public welfare. So, whether from that old English...

16 **CJI SURYA KANT:** Note Learned Attorney, and particularly under this head of 3.12
17 consideration of sovereign function in Industrial Law, I think that explain your viewpoint.

18 **R. VENKATARAMANI:** That's right.

19 **JUSTICE B. V. NAGARATHNA:** This 3.12 is history.

20 **R. VENKATARAMANI:** 3.12 the entire history.

21 **CJI SURYA KANT:** [UNCLEAR]?

22 **R. VENKATARAMANI:** Yes. My only concern to the judge as of now is to deal with the
23 sovereign functions issue and as we discussed that if for more than 1950 to 1978, the courts
24 have been trying to very courageously find out the good meaning for the word definition of
25 'Industry', and therefore, in that context, if a new law can throw some light, the court will not
26 see it, use it as a statutory instrument. Will not apply it, you know, as it is called extra rigorous
27 application, but using an interpretative tool to find out whether in a given case this will throw
28 some light for adjudication. Now for the 19th... in the context of the second part of the first
29 question Your Lordships have framed whether these two acts will have any impact, I think
30 that's the way the impact can be looked at. And if you are, and if a right in saying that prior to
31 2025, and between this period if the triple test plus all the other additional inclusions and the
32 caution required in applying that triple test, if that will be the law during this period, post
33 2025, of course the new code will take over. So, due to take charge of the period between 1978

1 to 2025, I think it will be important to keep all of them as a corpus of principles so that codes
2 which are called upon to deal with them, apply them, and resolve them. So, may I come to
3 paragraph page 8... 97, because from 84 to 96 we have traced out the history of sovereign
4 functions in distinct domains, legal domains.

5 **JUSTICE B. V. NAGARATHNA:** According to you, sovereign functions must be narrowly
6 interpreted now? Or broadly?

7 **R. VENKATARAMANI:** No, no, there has been ambivalent. That's why, for instance, if I
8 look at a judgment in 2019 which I quoted at page 96, so the question is, we seem to have a...
9 as I said, an ambivalent understanding. So, it seems that the definition of Industry in **BWS**,
10 we seem to be having some kind of a shadow on many of these considerations and concepts.
11 And it's very evident in for instance, at page 96 at 2019 judgment. We thought I will place it
12 for as a way of illustration. So, we have two distinct contexts in which this has happened. One
13 is the Consumer Protection Act, that's where 2019 comes, and another is the Competition
14 Commission Context where sovereign functions get to be discussed. We just make a note of it
15 at page 96, paragraphs 126 and 127.

16 **CJI SURYA KANT:** We think under the head of G2, you have summed up by saying that this
17 sovereign functions cannot be put into a straitjacketed formula.

18 **R. VENKATARAMANI:** That's right.

19 **CJI SURYA KANT:** And then 128 probably, illustration.

20 **R. VENKATARAMANI:** Exactly. Because this is why I thought we'll put the sovereign
21 functions debate in distinct legal domains like civil wrongs, consumer competition, and so I
22 thought this would be one possible route through which we can conceptualize sovereign
23 functions and therefore in future when the new code will have to be interpreted. Because I did
24 not find in the **Bangalore Water Supply** a particular instance, the water supply itself was...
25 the court said did not say it...

26 **JUSTICE P.S. NARASIMHA:** It itself doesn't happen.

27 **R. VENKATARAMANI:** Correct, because it followed extensively **City of Nagpur** and then
28 affirmed **Nagpur** and then overruled **Safdarjung**, so if the on the canopy of sovereign
29 functions **City of Nagpur** has been affirmed, in my view probably **City of Nagpur** has been
30 wrongly affirmed, because virtually the **City of Nagpur** and all the departments of the
31 municipality have been held to be industries, along with all other, so including tax department
32 and administrative department, so... the fire department. So therefore the question is, if today
33 the nature of a municipal function which is under a statute and can be necessarily determined
34 both from outside and internally, so would you say every activity of a municipal you know,

1 establishment would be an Industry? So as long as within that law there is sufficient safeguard
2 for an employer to have remedial process available, so that will be a safeguard. Certainly
3 without a safeguard you can't have a law, you can't say it will be left open for vagaries of
4 employment opportunities and context, certainly not. So therefore *City of Nagpur* is
5 affirmation seems to be an overbroad affirmation.

6 **JUSTICE B. V. NAGARATHNA:** Then the only remedy is by way of a suit or... if it is a...
7 no... if it is a Article 12, you see instrumentality or agency of the state.

8 **R. VENKATARAMANI:** Correct.

9 **JUSTICE B. V. NAGARATHNA:** Then possibly Article 226 remedy is there.

10 **R. VENKATARAMANI:** Correct.

11 **JUSTICE B. V. NAGARATHNA:** Otherwise it will be only by way of a suit. Now it... such
12 employees are covered, service...

13 **CJI SURYA KANT:** Most of the states are now...

14 **R. VENKATARAMANI:** Let me... let me lean... for the sake of argument, let me lean in
15 favour of the most comfortable process which a worker would like to have, in order there is no
16 uncertainty in the conditions of employment. Certainly the answer must be in their favour.
17 But today we have a large number of enactments which are regulatory enactments, which have
18 occupied the field of employment even in private sector, large number. Therefore, the need for
19 collective bargaining which was so important in the early days of industrial jurisprudence, is
20 now largely occupied by enacted legislation, policy, schemes. So in... where they do not exist
21 at all, then comes the question, what is the remedy available to me in order that the conditions
22 of employment, termination, retrenchment etc. should not happen in an arbitrary whimsical
23 way? Therefore, that's the way one should look at it. So we have gone far beyond that. I looked
24 into the large number of legislation post 1978 and pre-1978. So, for instance, the Construction
25 Workers Welfare legislation, you know, the most progressive legislation which has been
26 enacted in 1982. So we have crossed all those early days of the need, the need for essential and
27 inevitable need for collective bargaining. And if the state is absent-minded on certain issues,
28 of course, it will be a call for a debate.

29 So kindly just look at our submissions in page 97 to 99. Page 97, paragraph 130. Let me read...
30 If Your Lordship will permit me to read a couple of paragraphs here. Para 129, "The
31 jurisprudence outlined above revealed the fundamental principle, the nature of sovereign
32 functions, inherently linked to the evolving role of the state activity that may not be once
33 considered uniquely governmental could subsequently move the realm of private enterprise
34 or through public-private arrangement. Conversely, new forms of governmental responsibility

1 may emerge because of technological, economic or institutional developments. When you look
2 at the forestry issue by itself. Today, it's not merely a question of taking care of, watchmen to
3 take care of forests. It has become a national concern. So sustainable development,
4 precautionary principle, so on and so forth. So if there are certain national concerns,
5 community concerns, concerns even in some section of the community, so how do you... it
6 can't be left open to a private enterprise to come and say, I will do this. It requires today a
7 larger number of private activities to be essentially regulated by governmental and state
8 regulations, either a policy or a scheme or a law. I can't say I have a right to carry on trade and
9 I can carry on a trade on timber, you can't do that. You can't say I have a property, owner of a
10 land and I can alienate my land the way I want. You can't do that. Therefore, a large number
11 of legislative regulatory frameworks have encroached on many of our rights. So most
12 particularly in the realm of industrial jurisprudence, so that must be therefore kept in mind.
13 It will therefore shackle the powers of the government and to say that sovereign function be
14 only minimal, those enableable functions like defence, arms, etc. I think that will be a very
15 narrow way of looking at it.

16 **JUSTICE B. V. NAGARATHNA:** But the idea is to exempt sovereign functions. So whether
17 the exemption must be read strictly or narrowly?

18 **R. VENKATARAMANI:** That's right.

19 **JUSTICE B. V. NAGARATHNA:** Or broadly?

20 **R. VENKATARAMANI:** Broadly, broadly. I'm not asking the court to enumerate. I think
21 neither the legislature will do that nor the court is going to do that. I'm not saying that. I only
22 say that the 2020 code, that's why I said the feat has been very wisely set, activity is relatable
23 to sovereign functions. 82 also say that, 20 also say that. So there are two components in the
24 2020 code what are sovereign functions. So what are sovereign functions, open to question
25 but somebody can come in and say these are sovereign function, somebody... an activity can
26 be relatable to a sovereign function also. So it is both relatable to and as well as sovereign
27 function. The new code takes care of that, the width, the necessary width to be considered.

28 **CJI SURYA KANT:** In paragraph 131.

29 **R. VENKATARAMANI:** Yes.

30 **CJI SURYA KANT:** Have we done this?

31 **R. VENKATARAMANI:** 131 and also...

32 **JUSTICE B. V. NAGARATHNA:** 131 or the conclusions?

33 **R. VENKATARAMANI:** So paragraph 134 we have said, what are those things.

1 **CJI SURYA KANT:** Brother has asked you... for Issue No. 1 of course you, you deal with
2 ***Bangalore Water Supply*** and then social welfare activities and their impact. The next one
3 deals with...

4 **R. VENKATARAMANI:** Your Lords is reading at page 101?

5 **CJI SURYA KANT:** Page number 123. Paragraph 141.

6 **R. VENKATARAMANI:** Yes, yes. Yeah, let me read it. "The triple test laid down in
7 ***Bangalore Water Supply*** is a good law insofar as determining Industry under the
8 Industrial Disputes Act. The 82 Amendment may be used as an interpretative tool to avoid
9 overbroad interpretation and indiscriminate to applicate the triple test to identify an
10 organization Industry. These interpretations will be applicable to all cases pending on final
11 trial so on so and after which the Industrial Relations Code came into force and shall be
12 accordingly applicable. Issue 2: social welfare activities and schemes are the enterprises
13 undertaken by the Government Department Representatives cannot be construed as
14 industrial activity for the purpose of so and so. Caution must be taken while applying the triple
15 test to different activities, especially in relation to charitable organizations and Government
16 Departments carrying out sovereign functions, government functions, constitutionally
17 mandated functions. Then 3, modern Indian state is not confined to traditional sovereign
18 functions such as defence, maintenance of the public order, administration of justice. Rather,
19 it operates as a welfare state tasked with implementing wide ranging social, economic and
20 development policies. Such activities undertaken by the state, frequently involve
21 organizational or operational elements that may superficially resemble industrial or
22 commercial undertaking. However, such incidental operational aspects deserve closer
23 scrutiny and cannot be isolated and treated as independent industrial activities which may
24 undermine the broader governmental purposes. So thus, given the ever evolving nature of
25 state function, this Honourable Court may also recognize that executive is institutionally
26 better positioned to determine any activity as sovereign function and restrain itself from
27 exhaustively defining the same. Judicial reviews of course, remain available to ensure
28 executive determination is not arbitrary or inconsistent with the constitution."

29 **CJI SURYA KANT:** Very well. That this was probably you wanted to communicate in all
30 these paragraphs.

31 **R. VENKATARAMANI:** I also want to make a final submission that since the ***Nagpur*** has
32 been affirmed. Probably my stand would be that ***Nagpur*** to a considerable extent is not good
33 law because it says everything municipality is all Industry.

34 **CJI SURYA KANT:** Thank you, Mr. Attorney.

1 **R. VENKATARAMANI:** And I would say, therefore, today I said a large number of mid-day
2 meal schemes, and Aanganwadi workers and constructing... There are canals and canals which
3 are built only for a particular period. So, a private party cannot outside build a canal or have a
4 network of irrigation team. It's entirely up to the Government to decide where a canal will be
5 laid, for how long it will be laid, what will be the investment and so on and so forth. Therefore,
6 large number of such governmental activities today, they can't be trusted only on the principle
7 whether it can be otherwise, you know, undertaken by a private party. That test seems to have
8 some brittleness about it, that test of whether a private party can have. Therefore, if it can be
9 undertaken by a government, it can be an Industry, I say there is some brittleness about the
10 test. That of course where *Nagpur* went a little too overboard.

11 **CJI SURYA KANT:** Well, we appreciate the efforts done by the assisting team whose names
12 are also mentioned in your note. We acknowledge their hard work and...

13 **R. VENKATARAMANI:** Yes, we only place one mapping which you have made on the
14 various principles which *Bangalore Water Supply* has undertaken. And then they
15 emanate from which earlier precedent, so that it will be useful.

16 **CJI SURYA KANT:** We'll keep it in mind.

17 **R. VENKATARAMANI:** All those paras 148 is the entire case law. Then Justice Nagarathna
18 asked me a question in the forenoon about the common and the different parts of the three
19 definitions, 2(j), 1982 and so we are just worked out that what is...

20 **CJI SURYA KANT:** Yes, continue.

21 **R. VENKATARAMANI:** So, the common ones are coloured in green, and the different ones
22 are coloured by blue.

23 **JUSTICE B. V. NAGARATHNA:** So, we should not get mixed up.

24 **R. VENKATARAMANI:** The law is not colour blind. I'm grateful to Your Lordships.

25 **CJI SURYA KANT:** Thank you, thank you Mr. Attorney General.

26 **VIJAY HANSARIA:** I hope para 41 and Article 141 is it...

27 **CJI SURYA KANT:** Why you have so much itching? Yes, please.

28 **K.M. NATARAJ:** I am representing the *State of Uttar Pradesh*. That's the lead matter,
29 actually.

30 **CJI SURYA KANT:** *Jai Bir Singh?*

31 **K.M. NATARAJ:** Yes. And I am also conscious of the time indicated to me and I'll...

1 **CJI SURYA KANT:** And in any case, now learned Attorney has spoken on provisions. So
2 straight, you can start it off.

3 **K.M. NATARAJ:** I have given a short note. Although we have filed a separate detailed written
4 arguments but need not refer to that, I've given one very short note for the purpose of
5 consumption today.

6 **CJI SURYA KANT:** Yes.

7 **K.M. NATARAJ:** Kindly have a look at the written note which I have given today. Very
8 expansive interpretation has been given in the ***Bangalore Water Supply*** case. Therefore,
9 in order to remove certain ambiguities or the practical difficulties, the legislature initially
10 brought 1982 legislation, although it was not notified. And now again, 2020 legislation has
11 been brought in, giving certain definition to the Industry. Now that has to be taken as an
12 indicator for the purpose of interpretation of the definition which stood then also or to the
13 pending cases.

14 **CJI SURYA KANT:** Yes.

15 **K.M. NATARAJ:** The present legislation and also 1982 which has not been notified, that can
16 be taken as a clarificatory legislation, although it is not actually the clarificatory legislation,
17 that can be taken as a clarificatory legislation to understand the meaning of Industry, which
18 has been done in 1978 judgment.

19 **JUSTICE B. V. NAGARATHNA:** So the 1982 Amendment sort of restricts the judgement?

20 **K.M. NATARAJ:** Correct. Absolutely.

21 **JUSTICE B. V. NAGARATHNA:** Limits?

22 **K.M. NATARAJ:** Limits.

23 **JUSTICE B. V. NAGARATHNA:** The attempt was to limit?

24 **K.M. NATARAJ:** The attempt was to limit. So you have to take it as a clarificatory tool or to
25 clarify the difficulties or the ambiguities which it stood by way of the interpretation made in
26 the judgment of ***Bangalore Water Supply*** development case. Now, by taking it as a basis,
27 now I have formulated three points for consideration in second page in para 4. The first one
28 is, the subsequent legislative developments including the unnotified amendments and the
29 enactments of the Industrial Relations Code 2020, may be read as a clarificatory in nature,
30 reflecting the intent of Parliament regarding the scope and ambit of the definition of Industry,
31 that is the indicative of the legislative intent, why that was brought in, especially having
32 considered the ambiguity and the difficulty which the country faced by taking the

1 interpretation which has been made on the basis of the 19, the erstwhile Act, that is the first
2 one.

3 The second one, the concept of sovereign functions ought not to be understood in a narrow
4 colonial sense, but must be interpreted in the context of constitutionally governed democratic
5 state. In the judgments or till such a time what how it has been understood, the sovereign
6 function was in the colonial sense, that I will explain in the subsequent paras. That cannot be
7 the approach that has to be understood in the Indian context, how we are governed or ruled
8 by the Constitution and the democracy, it has to be understood in that context. Third one, the
9 interpretation must also consider the consequences that follow from an overly broad
10 construction and the need for an appropriate balancing competing considerations, that both
11 the employer and the employee, the competing interests will have to be properly balanced
12 while giving the definition to the Industry. We can't give a very sweeping definition to the
13 Industry which has been given in the **Bangalore Development Authority** case. Now
14 insofar as the first issue is concerned, definitely I'm very cautious of the caveat put by them,
15 that we are not called upon, that we are not defending anything with regard to the legality of
16 the new legislation, but however, my argument is the subsequent amendment that has to be
17 taken as an indicator of the legislative intent, what they wanted to do having regard to the past
18 difficulties which the country faced while implementing or bringing... taking forward the
19 earlier definition.

20 Now kindly go to the definition part of the 2020 legislation, which I have put in page number
21 4, 3. The code defines Industry as 2P so-and-so. Now Industry P-1, the first para and one and
22 two, it has almost retained what has been said in **Bangalore Development Authority**
23 case. **Bangalore Water Supply** case that has been retained the P, first para and 1 and 2.
24 Thereafter it's a, it does not include. The intent was, by virtue of that interpretation, the things
25 which have been given in the previous paras should not be included to say, "institutions won't
26 or managed by organization wholly or substantially engage in any charitable, social or
27 philanthropic services or any activity of the government relatable to the sovereign functions of
28 the appropriate government." Kindly note, it is relatable to the sovereign functions of the
29 appropriate government. Which means not only the sovereign functions but something
30 relatable to the sovereign functions are also sought to be excluded. If the intention was to
31 exclude only just the sovereign functions, they would have stopped. The categoric expression
32 is relatable, which has a very, very wide or the wide expression which can... if something is
33 connected to sovereign functions that are... those activities are excluded. Now kindly see the
34 next one, including, inclusive definition has been given thereafter, including all the activities
35 carried on by the departments of the Central Government dealing with the defence research,
36 atomic energy and space. So all the activities of defence research, atomic energy, irrespective

1 of whether it's a sovereign or non-sovereign, when it comes to defence research, atomic energy
2 or space, whether it's a sovereign or non-sovereign, it is immaterial. Even if it is unrelated also
3 it is immaterial. Even if it is unrelated, they are kept out of the purview of the Act. The first
4 part is relatable to the sovereign functions. The second one is in respect of atomic energy,
5 research and defence, everything that has been kept out of the purview of the Act, that is the
6 second part of it. This is the legislative intent. So that has to be... it has to be taken as an clue
7 what the legislature wanted to interpret or wanted to apply to the scenario and by keeping that
8 mind... by taking this as an interpretative tool, we have to interpret the meaning or the
9 judgment rendered in **Bangalore Water Supply** case. That is the first issue.

10 Now, the second one, because intent was to keep the welfare functions out of the purview of
11 the definition of the index, as we change, the time changes we get into the... the government
12 gets into many welfare legislations, welfare activities, so many other regulatory mechanism
13 where under the government never wanted you to bring it under the definition of the Industry
14 as it defined under the... in the judgment of **Bangalore Water Supply** case. Now coming
15 to the second issue.

16 **JUSTICE P.S. NARASIMHA:** So this will take within its whip even a small canteen run by
17 Defence Research? No? Will it take within its whip a small canteen run by Defence Research?

18 **K. M. NATARAJ:** Yes, completely kept out under the new one.

19 **JUSTICE P.S. NARASIMHA:** But you stand.

20 **K.M. NATARAJ:** Yes, completely kept. The meanings if you read it the Section 2, 2P 2 any
21 activity of the appropriate government relatable to the sovereign functions of the appropriate
22 government. Then including all the activities, all the activities, very sweepingly it is given,
23 carried on by the Department of Central Government dealing with the defence. So all the
24 activities dealing with defence.

25 **JUSTICE B. V. NAGARATHNA:** Defence research?

26 **K. M. NATARAJ:** Correct, Defence Research. I'm grateful, defence research, defence
27 research,

28 **JUSTICE DIPANKAR DATTA:** So defence research when you are using, that means other
29 departments other than defence research would be included?

30 **K. M. NATARAJ:** Correct. It could be relatable to, then relatable. The first expression should
31 be relatable.

32 **JUSTICE B. V. NAGARATHNA:** Off course a canteen My learned judge says, a canteen is
33 being run by a defence organisation.

- 1 **K. M. NATARAJ:** Then relatable.
- 2 **JUSTICE B. V. NAGARATHNA:** And it's not relatable to defence organisation.
- 3 **K. M. NATARAJ:** Relatable. Relatable. Then we have to see whether it's relatable or not.
- 4 **JUSTICE DIPANKAR DATTA:** He says that it will come within the first part.
- 5 **K. M. NATARAJ:** First part.
- 6 **JUSTICE DIPANKAR DATTA:** Relative.
- 7 **JUSTICE B. V. NAGARATHNA:** Remedy then?
- 8 **K. M. NATARAJ:** Other remedies. The either 226 remedies are there, Tribunals are there,
9 various Tribunals are constituted, or 226....
- 10 **JUSTICE B. V. NAGARATHNA:** Central? Central Tribunals? Central Tribunals are there
11 for the State Employees.
- 12 **K. M. NATARAJ:** Yes, in Central Tribunals is....
- 13 **JUSTICE B. V. NAGARATHNA:** If it is not an Industry, where will it go? Central Industrial
14 Tribunal, if you say it is not an Industry, then where will the employees go? To file a suit, or
15 under 226?
- 16 **K.M. NATARAJ:** If it is a state they can go under 226, if not suit...
- 17 **JUSTICE B. V. NAGARATHNA:** But now you have Central Industrial Tribunal.
- 18 **K. M. NATARAJ:** No whatever the other forums what do we have to bring it out of the, this
19 one the definition of Industry as such that was the intent. Not to bring within the definition of
20 Industry please, please.
- 21 **JUSTICE JOYMALYA BAGCHI:** So we are interpreting these provisions in aid or tool to
22 restrict or redefine the ratio of *Bangalore Water Supply*. Would it not in effect give a
23 retrospective operation to the Labour Court when the legislature gave operation of the Labour
24 Court from a posterior date of its passing, that is from 2025? And now, if we, in order to
25 interpret or revisit the ratio of a 78 judgment, use them as interpretative tools, would we not
26 fall in re-legislating a prospective law as a retrospective law?
- 27 **K. M. NATARAJ:** Yes. It is not actually.
- 28 **JUSTICE JOYMALYA BAGCHI:** You have, you have used a word 'clarificatory law'.
- 29 **K. M. NATARAJ:** Yes.

1 **JUSTICE JOYMALYA BAGCHI:** Do you really wish to press that argument that the Labour
2 Court is a clarificatory law, or is a law which redefines labour... relationship between employer
3 and employee, where earlier vested rights were defined in the repealed law namely the 1947
4 Act?

5 **K. M. NATARAJ:** I cautiously submitted. It is not a clarificatory law but it is in the nature of
6 clarificatory law.

7 **JUSTICE JOYMALYA BAGCHI:** That's exactly the...

8 **K. M. NATARAJ:** That exactly I wanted to draw the distinction.

9 **JUSTICE JOYMALYA BAGCHI:** That's exactly are you going to pass of a wolf in sheep's
10 clothing?

11 **K. M. NATARAJ:** That cannot be.

12 **JUSTICE JOYMALYA BAGCHI:** That is where my question lies.

13 **K. M. NATARAJ:** It has to be. it has to be taken.

14 **JUSTICE JOYMALYA BAGCHI:** Your interpretation is to be accepted. We would be
15 unwittingly giving retrospectivity through our judicial imprimatur in reviewing *Bangalore*,
16 retrospective and thereby restricting or interpreting an existing industrial dispute in the light
17 of 47 Act.

18 **K. M. NATARAJ:** No, it has to be... It is only for the purpose of interpretation. Interpretation
19 of even then also in the 1947...

20 **JUSTICE JOYMALYA BAGCHI:** We interpret *Bangalore*, in the shadow of the 2020
21 code, and we carve out sovereign functions by giving sovereign function a wider interpretation
22 as the learned Attorney and you are proposing. We are importing the restrictions of the 82 as
23 well as the 2020 Labour Code. Although, the legislature did not operate... introduce them
24 retrospectively. Now, in this interpretation the danger is a dispute, an industrial dispute which
25 is in existence at various stages of adjudication would now be coloured by our interpretation,
26 which will be binding on Article 141. All these discrepancies....

27 **K. M. NATARAJ:** I want to add something.

28 **CJI SURYA KANT:** The point is very simple.

29 **K. M. NATARAJ:** Yes.

30 **CJI SURYA KANT:** Mr. Attorney, that's why we were pointing out. 1982 Amendment, will
31 it be legislature, but it became think wishful thinking of the executive never implemented.

1 Therefore, a provision which never came into force, a provision which never saw the light of
2 the day, we can't probably rely upon that. 2020 we will consciously not refer to, because of the
3 caveat already put in that if there is a challenge to that provision.

4 **K. M. NATARAJ:** Absolutely.

5 **CJI SURYA KANT:** But that does not mean that we are helpless. Today there is a reference
6 before us. We are directly examining the question that whether the interpretation of the
7 original provision itself in Bangalore was correct or not. If that interpretation was wrong, if
8 that provision has been completely misconstrued by giving such a wide meaning, then we will
9 correct our mistake, very simple. We will rectify our errors.

10 **JUSTICE P.S. NARASIMHA:** Particularly when the original definition didn't have then...

11 **CJI SURYA KANT:** That's why we are sitting in line.

12 **R. VENKATARAMANI:** Since Your Lordships, in the references, the second part of the first
13 issue has come in like this, whether these instruments of law later in point of time will have an
14 impact. Suppose I close my eyes to the second part of the issue, the only way will answer the
15 question is whether it is good law or bad law. But for the purpose of reaching that conclusion,
16 is it open to the court to look at each one of the legal instruments and say, do I gather anything
17 from them, can it be of any help, whatever way you describe them. So court may say no, I can't
18 look into them at all.

19 **JUSTICE P.S. NARASIMHA:** Mr. Attorney, without taking the 1982 as well as the 2020
20 "legislations", whatever they are, you can still make your argument on the basis of the original
21 definition...

22 **R. VENKATARAMANI:** My understanding the second part of the issue may or may not be
23 strictly relevant to answer.

24 **JUSTICE P.S. NARASIMHA:** This is therefore unnecessary.

25 **JUSTICE B. V. NAGARATHNA:** Usually what happens, an earlier law is considered to find
26 out the subsequent law, how far if there are changes, it advances the purposes of the Act.

27 **R. VENKATARAMANI:** All the detailed examination will have to be undertaken. Detailed
28 examination will have to be undertaken, correct.

29 **JUSTICE B. V. NAGARATHNA:** Earlier law is always taken into consideration. Heydon's
30 Rule, Mischief Rule.

31 **K. M. NATARAJ:** Yes, please. The sovereign function, which has been... the interpretation
32 which has been given in *Bangalore Water Supply* case, that has been rendered by keeping

1 in mind the common law system or the colonial... by applying the colonial jurisprudence,
2 which may not apply to our system, especially...

3 **CJI SURYA KANT:** Is very simple. The original definition of 2(j) never contemplated and
4 cannot be stressed, to include either sovereign activities or sovereign related activities, though
5 word related is figuring in 2020 code, it's a very general nomenclature word. So it can be or
6 any activity which is allied to or which is done the dominant part. The predominant activity is
7 the sovereign activity, but any other activity which is done in furtherance of, in assistance of
8 or in achieving a sovereign activity, that activity will also be protected along with the sovereign
9 activity and therefore that will not fall within the ambit of 2(j), originally as unamended. That
10 is what precisely.

11 **K. M. NATARAJ:** Sovereign activity as we normally understand under the western
12 jurisprudence or the common law system that cannot be applied to understand our system.
13 That cannot be applied because fundamentally when we go to the sovereign function which
14 means the certain functions which are normally not answerable to the courts which cannot be
15 reviewed, but when...

16 **CJI SURYA KANT:** That also again you need not to depend upon any foreign jurisprudence.
17 Your argument can be very well that any activity which is in Part 4 of the Constitution is a
18 constitutional obligation.

19 **K. M. NATARAJ:** Obligation on the state.

20 **CJI SURYA KANT:** And therefore an elected government is obligated to perform those
21 duties. If you don't do, then you fail to perform your constitutional responsibility.

22 **K. M. NATARAJ:** Absolutely.

23 **CJI SURYA KANT:** When you perform those duties, these are your sovereign functions as a
24 state that you are obligated under the Constitution. Sovereignty is drawn from the
25 constitutional expression and therefore all those activities following that ambit. Social welfare
26 activities will also then according to you.

27 **K. M. NATARAJ:** In that judgment actually they confined to three facets that is, no. 1, by
28 applying the... the western jurisprudence of the sovereign function, to say that, see normally
29 the functions relating to the defence which are normally not answerable to the courts but that
30 cannot be applied to our system, where the judicial review is applicable to everything, as a
31 basic structure. Therefore, we can't apply the meaning which is ascribed to the sovereign
32 function as in the colonial era. So here everything judicial review is permissible, therefore we
33 have to test from the angle of what is applicable to our country, what is applicable to our

1 system, especially we derive every right and the work from the Constitution. That has to be
2 understood accordingly.

3 **JUSTICE B. V. NAGARATHNA:** Certain activities which the state was performing...

4 **K. M. NATARAJ:** Yes.

5 **JUSTICE B. V. NAGARATHNA:** Public sector units were there.

6 **K. M. NATARAJ:** Yes.

7 **JUSTICE B. V. NAGARATHNA:** Now they are privatizing, for example ITDC Tourism
8 Development, and Tourism Development Corporation...

9 **K. M. NATARAJ:** Yes.

10 **JUSTICE B. V. NAGARATHNA:** They are privatizing, they are selling the hotels
11 everything. They are being purchased by private entities and they are running it.

12 **K. M. NATARAJ:** Yes.

13 **JUSTICE B. V. NAGARATHNA:** Now what happens to those? There is a, you see there...
14 both ways there are changes.

15 **K. M. NATARAJ:** The regulatory mechanism still it is retained with the government that is
16 the change scenario where the government lays down the broad policy, what has to be done
17 and how it has to be carried forward. And when we go into the contractual field, there are other
18 remedies provided in the respective fields. So ultimately...

19 **CJI SURYA KANT:** My sister's question is very simple.

20 **K. M. NATARAJ:** Yes, yes.

21 **CJI SURYA KANT:** It may be a part of your constitutional obligation to promote say for
22 example Industry because you want to generate employment, you want to have an equitable
23 distribution of wealth. That you can do only when you spread employment, make the other
24 people inclusivity and participatory role you assign to them. But it may not be your
25 responsibility in terms of Part 4 to run suppose an iron ore Industry or to establish hotels and
26 to run the hotel. That may not be your activity. So therefore that individual activities can very
27 well, conveniently on facts to facts basis can be excluded from the...

28 **K. M. NATARAJ:** That has to be tested on facts. That even the government can enter into
29 Contracts, government can enter into business, the such activity which is totally unrelatable
30 they can be excluded, no doubt about it.

1 **R. VENKATARAMANI:** For instance, an example is printing currency is a sovereign
2 function but a mint is an Industry. So therefore the actual activity of carrying it the code says,
3 policy says it will be done by so and so, it will be an Industry. Therefore the sovereignty
4 becomes...

5 **JUSTICE P.S. NARASIMHA:** Instead of taking a case by case basis and burdening the court
6 to identify which is a sovereign activity...

7 **K. M. NATARAJ:** Exactly.

8 **JUSTICE P.S. NARASIMHA:** Which is not a sovereign activity, like Contract Labour Act
9 and many other statutes, wherever you think a particular Industry is necessary to be excluded
10 from the provisions of the Act to indicate in the schedule. So you don't do anything like that,
11 you just leave an expression. In the first Act there is no expression of sovereignty. And today
12 whole thing depends upon how we define that expression sovereign.

13 **K. M. NATARAJ:** That has become a challenging task.

14 **CJI SURYA KANT:** Rather defining sovereignty you name your activity to the Presiding
15 Officer of the Industrial Tribunal or Labour Court, with his fanciful ideas he can hold anything
16 as sovereign function and he can ask.

17 **JUSTICE P.S. NARASIMHA:** Within a schedule you tell us, then we will test the legality in
18 a... in a in a judicial review we will say if you wrongly included we will exclude it. If it is rightly
19 included then the purpose is served, the Industry is out.

20 **JUSTICE B. V. NAGARATHNA:** They can include by a Notification any activity as an
21 Industry, not exclude.

22 **K. M. NATARAJ:** Exclude.

23 **JUSTICE B. V. NAGARATHNA:** But include. This you can include.

24 **K. M. NATARAJ:** But now we can exclude. Now it can be excluded.

25 **JUSTICE P.S. NARASIMHA:** In 47 we were just examining, used just 25 words. I counted
26 from Industry means the second word, any third word, you count it 25 words and today from
27 1947-2026, how many words have been contributed in various judgments, count them in
28 trying to interpret what that definition is. Use such expressions, so open ended, open textual
29 and then the litigation is unabated, unabated. It's a classic example of how a definition can
30 fail.

31 **K. M. NATARAJ:** In many areas for the purpose of interpretation people have to rush to the
32 court. That is the only solution even in the... so that is the second line of our point, which I

1 pointed out. Especially it will affect the education, health care and social security measures
2 which they are, if they are brought under the purview of the sovereign function, that will be
3 affecting the, in this. Page number 6 in para 12, I pointed out. It's the responsibility of the
4 government as a welfare measure to bring education, health care, forest. Forest, we can't do
5 anything. It has to be, it is the function or the duty of the government to preserve the
6 environment, to preserve the forest. There are various legislations under the... coming under
7 the broad definition of "forest". Even the Irrigation Department, laying the canals,
8 construction of dams, exercise of eminent domain power. You know all those activities we can't
9 bring the principle of Industry for the purpose of Industrial Disputes Act. Now in the next...

10 **CJI SURYA KANT:** Water supply activity, the water supply activity, the State does not
11 supply drinking water. Is it not a constitutional failure of welfare?

12 **K. M. NATARAJ:** It is, it is.

13 **CJI SURYA KANT:** And if that State supplies the water, you say it's an Industry.

14 **K. M. NATARAJ:** Industry. That cannot be.

15 **CJI SURYA KANT:** Therefore, this distinction can always be made.

16 **K. M. NATARAJ:** Correct.

17 **CJI SURYA KANT:** But if you start running showrooms and selling some products and all
18 these things, then you are trying your hands in business and Industry. Then of course your
19 activities are like that.

20 **K. M. NATARAJ:** Directly getting into the business.

21 **CJI SURYA KANT:** Then even if you don't earn profit. Even if there is no element of profit,
22 the very fact that you have decided to run as a public entrepreneur and to run some industrial
23 activity, you are bound to it.

24 **K. M. NATARAJ:** Yes. Getting into the business, no doubt it is... getting into the business.
25 no doubt it is permissible for the state. But however directly if you get into the business then
26 no doubt we can make the other this the definition within... can be brought within the
27 definition of Industry. But in some of the issues, the generation of the revenue would be only
28 an incidental. In the state functions, generation of the revenue would be only an incidental.
29 But the primary function is to give certain benefits to the people, which is constitutionally
30 mandated, where no doubt there will be some kind of revenue generation. But the primary
31 object test, the test would be, whether it was the primary object of the government to give the
32 certain benefits as a welfare measure. That should be the test. If the profit earning alone is the

1 motive or the criteria, then no doubt the definition of the Industry that can be restricted to say
2 that yes, it covers under the definition of Industry for the purpose of application of the Act.

3 **JUSTICE B. V. NAGARATHNA:** There is no profit, it can still be Industry.

4 **K. M. NATARAJ:** Yes, yes.

5 **JUSTICE B. V. NAGARATHNA:** That is what the judgment says.

6 **K. M. NATARAJ:** Correct. Now in para 17 of my note, in the present proceedings itself when
7 it travels before this Honourable Court, 5 judges had expressed their concern about certain
8 aspects, which I quoted. Kindly take to para 17 of my note. That was in these present
9 proceedings itself. Its's para 38 of that order. "We also wish to enter a caveat on compiling
10 sovereign functions to the traditional show described as inalienable functions comparable to
11 those performed by a monarch, a ruler or a non-democratic government. The learned judges
12 of in so-and-so's case seem to have confined only such sovereign functions outside the purview
13 of Industry, which can be termed strictly as a constitutional function of the three wings of the
14 State executive and legislature and judiciary. The concept of sovereignty in a constitutional
15 democracy is different from the traditional concept of sovereignty, which is confined to law
16 and order, defence, law making and justice dispensation. In a democracy governed by the
17 Constitution, the sovereignty vests in the people and the people is obliged to discharge its
18 constitutional obligations contained in the directive principles of State Policy in Part 4 of the
19 Constitution of India.

20 From that point of view, wherever the government undertakes public welfare activities in
21 discharge of its constitutional obligations as provided in Part 4 of the Constitution, such
22 activities should be treated as activities in discharge of sovereign functions falling outside the
23 purview of Industry. Whether employees employed in such welfare activities of the
24 government require protection, apart from the constitutional rights conferred on them may
25 be a subject of separate legislation, but for that reason, such government activities cannot be
26 brought within the fold of industrial law by giving an undue, expansive and wide meaning to
27 the words used in the definition of Industry." So, it has to be the meaning of the Industry that
28 has to be understood keeping in mind the present setup, the constitutional obligation,
29 constitutional mandate on the government, and not restricting or strictly saying that yes, it is
30 the sovereign function or not.

31 **CJI SURYA KANT:** Yes.

32 **K. M. NATARAJ:** And lastly about my submission in para 18, the consequences of narrow
33 interpretation, which I pointed out, especially when it comes to government employees. They
34 are all regulated by Article 309 or 311, there is a separate service rules. Insofar as other

1 employees are concerned, state administrative Tribunals are there, service Tribunals are there.
2 In state government level, there are educational Tribunals. So all those forums they take care
3 of the situation, and depending upon the service rules, depending upon the terms of their
4 employment, the interpretation can be given. Employees and employer would be protected
5 or... the rights or the liabilities of the employer-employees are completely regulated by such
6 statutory regime. The further consequence, as noticed by this honourable court itself in the
7 next judgment in para 21, which I quoted in **(1997) 6 SCC 723**.

8 **CJI SURYA KANT:** Para 13 is relevant to first... you can see the next paragraph.

9 **K. M. NATARAJ:** Para 13.

10 **CJI SURYA KANT:** 13 of the judgment.

11 **K. M. NATARAJ:** Yes, that's right. 13, yes. Paras 12 and 13. The forums also they have
12 described, mentioned about the alternative forums, which are available to safeguard the
13 interests of both, employers and employee, that is also, and there will be conflict of forums. It
14 will lead to serious consequences. The next para, the final, I pointed out that, all these welfare
15 measures or welfare steps will be hampered by giving scope for undue strikes, layoffs or
16 collective bargaining conflicts. That may not be advisable in the present scenario, may not be
17 the intent of any developing state.

18 **CJI SURYA KANT:** In para 23 of your note also you have...

19 **K. M. NATARAJ:** Yes, I am grateful. Consequence of origin Industry... it is incompatible with
20 the... By keeping in mind these aspects, my request would be to interpret the definition which
21 has been interpreted by the **Bangalore Water Supply** case, sovereign function, very
22 broadly and not to include everything under the definition of Industry and accordingly to pass
23 appropriate order. I'm grateful for...

24 **SHEKHAR NAPHADE:** As far as sequence is concerned, I'm supposed to be the third one,
25 my learned friend.

26 **RAVINDRA RAIZADA:** You are, you are. My Lord, I'm for the State of UP. The other
27 counsel, but the problem is that time has been consumed. I'm for the State of UP by the
28 Irrigation Department.

29 **CJI SURYA KANT:** It is argued.

30 **RAVINDRA RAIZADA:** Yes, I'll argue only one...

31 **CJI SURYA KANT:** If you have any one line argument...

1 **RAVINDRA RAIZADA:** No, I'm not having one line argument to support it. I'm on a one
2 paragraph of the ***Bangalore Water*** case and then will finish my argument within 5 to 10
3 minutes. I'm on the Section 6 itself because what is the what is the...

4 **CJI SURYA KANT:** Read the paragraph you want to read. Which paragraph you want to
5 read?

6 **RAVINDRA RAIZADA:** Paragraph 141 of the ***Bangalore Water*** case.

7 **CJI SURYA KANT:** Yes, 141, Learned Attorney General has read.

8 **RAVINDRA RAIZADA:** No, that that has been read therefore I wanted to say something
9 regarding that only and then I'll finish my argument because that is the problem with the
10 whole judgment. Your Lordship may kindly allow me to read the paragraph 141 carefully and
11 then what the, there are two principles that have been applied therein, *Noscitur a Sociis* and
12 expanding role of the inclusive definition. On these two aspects, I'll make my submission and
13 finish that.

14 **CJI SURYA KANT:** Yes Mr. Attorney, five minutes only please. State time is over.

15 **RAVINDRA RAIZADA:** Yes. That's why I said that Mr. Nataraj exhausted the time. I'll do
16 one thing yes, My Lord.

17 **CJI SURYA KANT:** Just five minutes.

18 **RAVINDRA RAIZADA:** I'm reading that and by reading I'll explain what is there. Although
19 Section 2(j) uses words of the widest amplitude in its two limbs their meaning cannot be
20 magnified to overreach itself. Right. They say the undertaking must suffer a contextual and
21 associational shrinkage as explained in ***Banerjee*** and in this judgment, though also service
22 calling and the like. Your Lordship may kindly see paragraph 13 of the same judgment says
23 that the principle of *ejusdem generis* has to be applied and the word, one word should take
24 colours from the others. So My Lord, the restrictive meaning is here, is that undertaking must
25 suffer a contextual and associational shrinkage as explained in ***Banerjee*** and in this judgment
26 so also service calling and the like. This yields the inference that all the organized activity
27 possessing the triple element in one, first principle, although not trade or business may still
28 be Industry, provided the nature of the activity that is namely the employer-employee basis
29 bears resemblance to what we find in trade or business. Lordship, what I am saying is that that
30 the core issue they say that the Employee and Employer basis is there, therefore they say that
31 that organized activity will be call, will, this yield by inference that wherever they find this
32 activity, the employers and employee relationship that would be an undertaking. That's what
33 I am saying is the shrink, this is not the shrinking interpretation of the word "undertaking".
34 Now they moves further because what they say the shrinking interpretation, now they say

1 they're expanding it. This takes into the fold of Industry undertaking, calling and services,
2 adventures analogous to the carrying on the trade or business. Now they say, all features other
3 than the methodology of carrying on the activity is other than, the, that is in organizing the
4 cooperation between employer and employee may be dissimilar. Now Your Lordship may
5 kindly see that now the trade and business, what is there in the other definition, definition
6 words? What is there in the trade and businesses? They say that organizing the cooperation
7 between employer and employee barring this there may be dissimilarity. So therefore if this is
8 not a trade, it is not a business, it is not a manufacture, and if the element of master and servant
9 relationship is there in a systematic activity, then it is an undertaking. So therefore, My Lord,
10 my submission is not from the perspective of the workmen, this is the activity of the Industry
11 which is relevant and therefore the Industry, the activity which is analogous to the trade,
12 business and manufacture may be taken to be within the fold of Industry but not otherwise.
13 And so far as the sovereign functions aspect is one liner. The definition says, "and including
14 service etc."

15 **CJI SURYA KANT:** We've seen your note.

16 **RAVINDRA RAIZADA:** My Lord "and including" must be read as, "and comprising", and
17 that is why this Honourable court has referred to that in...

18 **CJI SURYA KANT:** This one word inclusion is very well known.

19 **RAVINDRA RAIZADA:** So My Lord might say that because I'm for Irrigation Industry, so
20 the functioning of the irrigation Industry is a constitutional duty. So therefore the Irrigation
21 Department and so far as the dam management so far as the disaster management, these are
22 the activities, disaster activities they cannot be transferred to the private sector, so therefore
23 this is not analogous to trade and Industry, and that's what I'm saying by way of illustration. I
24 submit. Thank you.

25 **CJI SURYA KANT:** Thank you. Thank you very much. Yes, Mr. Naphade.

26 **SHEKHAR NAPHADE:** I am in two matters. One is the *Mumbai University*, where the
27 issue is education, and the second matter is for *State of Maharashtra*, where the issue
28 relates to forest. Now the essence of *Bangalore Water Supply* is in para 140 which has
29 been shown to Your Lordship. It contains the triple test. Now, my first objection to the triple
30 test is, that it is not based on logic. It does not flow out of the wording of the relevant part of
31 the statute. It is straightaway borrowed from an Australian judgment. It falters on the altar of
32 reason, which I will indicate to Your Lordship in few minutes. Taken to its logical conclusion,
33 given the sovereign functions would be within the sweep. Take for example, the judicial
34 functions of the state. There is employer either the government or the courts. There are

1 employees cooperation resulting into service. Then how do you take it out? There is no logic.
2 The court in ***Bangalore Water Supply*** carves out three exceptions - the sovereign
3 functions, the religious functions, and aesthetic functions. In case of religious functions, it's
4 also a service. So, by what logic do we restrict aesthetic? Court says that holding a *mushaira*
5 is a cultural activity. Therefore, out. In other words, tested on the principle of logic, triple test
6 falters. Now, the second issue is whether does it flow out of the wording. Now let's have a
7 wording of the statute. And once the triple test is out, then we are on a clean slate. Now, kindly
8 see the wording of the statute My Lord. Industry means...

9 **CJI SURYA KANT:** Any note has been given, Mr. Joshi?

10 **JUSTICE B. V. NAGARATHNA:** Yes.

11 **SHEKHAR NAPHADE:** My note is there.

12 **CJI SURYA KANT:** Got it.

13 **SHEKHAR NAPHADE:** So, kindly see Industry means any business trade, undertaking,
14 manufacture, or calling of employers and includes any calling service employment, anti-
15 corrupt, or industrial occupation, or avocation of workmen. Now, the material words are
16 business, trade, manufacture, calling. Now, the word 'calling', the dictionary meaning of the
17 word 'calling' is also trade. Now, therefore, Your Lordship will see the word 'undertaking' is
18 wedged on one side business and trade, and on the other side manufacture or calling. And
19 therefore, it must necessarily derive its content from the words 'preceding' and the words
20 'following'. Now the court... the judgment begins with a reference to the principle of *Noscitur*
21 *a Sociis*. Kindly see My Lord a few paragraphs. If Your Lordships come to paragraph 2 page
22 227, paragraph 10, page 230, paragraph 13. So it begins at page 202... 2062, I stand corrected
23 and the internal page 227 of the report. Your Lordship got para 2?

24 **CJI SURYA KANT:** Yes.

25 **SHEKHAR NAPHADE:** "*Esoterica is anathema* for law affecting the common man". So the
26 last para on that page, Internal page 207 and 2079. Your Lordship got the last para?

27 **CJI SURYA KANT:** Yes.

28 **SHEKHAR NAPHADE:** "*Esoterica is anathema* for the law affecting the common man in
29 the common life, and so the starting point of our discussion is the determination to go by the
30 plain, not the possible sense of the words used in the definition informed by the context and
31 the purpose of the statute, etc." Now this approach Your Lordship will find also in para 10 page
32 230, para 13... so I'm referring to the internal pages of the report. Your Lordship got the
33 judgment? Then para 13... para 10 page 230, para 13 page 230, para 40 at page 241 and 242

1 and para 42 page 242. These are the paragraphs where the learned judges refer to the literal
2 meaning of the terms and this approach then subsequently is abandoned. And then court
3 straightaway goes to the Australian judgment.

4 Then second, the principle of *Noscitur a Sociis*, Your Lordship will find is referred to in para
5 2, same page 227, para 13 page 230, para 37 page 240, para 38 page 240. The court refers to
6 this principle while considering the term undertaking but not followed, given up. So this is one
7 aspect. Then kindly come to para 2 again for a purpose. The court says that "we cannot rely
8 upon foreign judgments, there are no absolutes in life which is relative. What is an industrial
9 America?" Your Lordship got that? "What is an Industry in America or Soviet Union may not
10 be one in India. And in our own country what is not Industry decades ago may still be now so
11 and so". Then in para 44, Your Lordship will come to para 44, where several judgments of
12 foreign authorities are quoted, referred to, but see what the court says. See Justice Subba Rao
13 with uninhibited logic, cases his thought and reaches certain tests in **Nagpur Municipality**
14 speaking for unanimous bench. "We respectfully agree with much of his reasoning and
15 proceed to deal with the decision. If the ruling were right, we think it is, the riddle of Industry
16 is resolved in some measure although foreign decisions, words and phrases, lexical
17 [UNCLEAR] and definitions from other legislations were read before us to stress the necessity
18 of direct cooperation between the employer and the employees is the essential product of the
19 undertaking of the need for commercial motive of service to the community etc. as implied in
20 articulately in the concept of Industry we bypass them as but marginally persuasive".

21 Now several judgments are cited before the court, foreign judgment bypass them and we
22 straight away go to the Australian judgment and the whole concept of triple test is borrowed
23 from the Australian judgement. And more so the reasoning of the majority judgment, Your
24 Lordship will see Justice Isaac's judgment which is followed entirely is the minority judgment
25 and there is not a word about the majority judgment. So therefore my respectful submission
26 is that court has proceeded with a value loaded approach. The worker oriented approach. What
27 I feel is that we need to objectify the process of interpretation. The time has now come to
28 objectify that process. So what is the plain meaning of these words trade, business,
29 manufacture? The word "undertaking" is placed in between these words. The principle of
30 *Noscitur a Sociis* must apply necessarily. There is no escape from it.

31 Now come to the other aspect of the matter. Now kindly see My Lord why triple test and the
32 concept of sovereign functions they are correlated. Now according to me, we don't have to go
33 to the concept of sovereign function. The simple test is this, that essential government function
34 which is it is statutory obligation. Let me formulate it. Essential government function which
35 arises out of its statutory obligation. Now we'll begin with **Nagpur Municipality** case. What
36 is the reasoning of the court? That providing road, providing water supply, and other civic

1 amenities is something which a private entity can do and therefore it is an Industry. Then the
2 court goes on to say that since the principal activity is Industry, even the Tax Department is
3 an Industry. Now this is where the logic falters. Now let us apply the test of principle activity.
4 The test is very simple, whether it has commercial roots. If it has no commercial roots, even if
5 it results in manufacture, production of goods and services, it is still not an Industry. Now take
6 for example the irrigation facilities, the number of welfare activities that the state performs,
7 they are not rooted in commerce. They are in discharge of the state's obligation. Now
8 something... now for example construction of roads, this is something which a Municipal
9 Corporation is under an obligation to do so. Essential governmental function. Now let's come
10 to the university with which I am more concerned. So university performs three functions.
11 Number one, it holds examination and confers degrees and diplomas. This is something which
12 a private individual cannot do. It's an essential government function performed under a
13 statute. A statutory obligation is not rooted in an economic activity, it is not rooted in
14 commerce. So instead of going into the concept of sovereign function, we must go into the
15 concept of essential statutory functions of the state. Now what is the second function of that
16 the university discharges? It's a regulator. It prescribes qualifications for appointment of
17 lecturers, professors etc.

18 It also prescribes eligibilities for the students. Now, the affiliation of colleges and several other
19 things which no private individual can do. The third is teaching. Now, as far as teaching is
20 concerned, I will take it a little later. So, University Grants Commission, All India Technical
21 AICTE, all these bodies, these are essentially regulatory bodies.

22 Now, in discharging their respective statutory functions, there is cooperation. It results also
23 into rendering service, but it is not an Industry. Because they are not rooted in commerce. So,
24 we come back to the same thing that how do we interpret the word Industry as the dictionary
25 meaning of the terms that are deployed in the definition of 2(j)?

26 Now, let us go to teaching. Now, what is the essence of teaching? Is intellectual enlightenment.
27 It cannot be compared to a material service. Education ultimately is the foundation of the
28 progress of any country. Article 41, Directive Principles of State Policy, requires the state to
29 take steps to provide education. Article 21(A) now education is made of fundamental right,
30 and much before that even in *Unni Krishnan* judgment, Your Lordship read that as a part
31 of fundamental right. So therefore, what state does as a statutory obligation cannot be
32 considered as an Industry at all. So, that is another aspect of the matter.

33 **CJI SURYA KANT:** 21 and 21A is now constitutional obligation, not principal obligation?

34 **SHEKHAR NAPHADE:** Constitutional obligation. But earlier in *Unni Krishnan* Your
35 Lordship read it as a fundamental right. So therefore, we apply a very simple test whether it's

1 an essential statutory obligation of the state. If it is so, it is outside the purview of because it is
2 not rooted in commerce. So, as far as university aspect is concerned, there is another point
3 which has to be considered. The teachers are admittedly not workmen. Even **Bangalore**
4 **Water Supply** proceeds on that assumption. Of course, there is a doubt expressed, it they
5 may or may not be. Whichever way, as far as teaching is concerned, therefore, it is carried on
6 by persons who are not workmen within the meaning of Section 2(S) of the Industrial Disputes
7 Act. The other staff members, their health is of a marginal nature. The judgment also refers to
8 a university having a transport department, printing press, etc. Now these are incidental
9 activities. In **Nagpur Municipality** case, the court formulates a test of essential and
10 primary functions. And since the essential and primary functions constitute an Industry,
11 therefore, tax department is an Industry. But when it comes to the education, the court says
12 that these are activities. In large scale *prasad* making, the court says it is an Industry. But here
13 the test of essential function is not applied. If you are... The whole judgment defies logic.

14 So, the last aspect is, at several places Your Lordship will see the judgment says that we need
15 a mechanism to solve these disputes. No debate on that issue at all. As far as government
16 servants are concerned, right from the beginning of the civil service, we have statutes. We have
17 prescribed recruitment process, we have prescribed qualifications for appointments. We have
18 prescribed service conditions and all aspects of service conditions, salary, wage, terminal
19 benefits, everything. And if services are terminated, there is a mechanism to deal with the
20 termination also. So if there is a statute in operation which takes care of all, we don't need
21 Industrial Disputes Act.

22 I'll give you one example. As far as government servants are concerned, their salary and etc.
23 are fixed by the rules provided under Article 309. Now let us take a dispute to the Tribunal
24 about wages. The Tribunal exercises the judicial power of the State. Now can it alter the wage
25 structure which is prescribed by the rules provided under Article 309? It obviously can't,
26 because then the Tribunal will be discharging a legislative function which it cannot do. So
27 therefore, while interpreting the definition of Industry, these aspects are required to be taken
28 into account. Of course, I do concede that merely because an activity is carried on by
29 government, it does not cease to be an Industry. Maybe. But where there is a discharge of a
30 statutory function, then it goes out. Now the second aspect is, as far as education is concerned,
31 the court proceeds on the footing that for university there is no statutory regime. So the first
32 university act in this country is Indian Universities Act 1904. So right from 1904 till today, all
33 university teachers, professors, other staff members, their service conditions are under a
34 statute and there is a Tribunal also. So therefore, the purpose of industrial disputes is served
35 also by the other relevant statutes. This aspect is not taken into account. And sir the court was
36 conscious of that fact in para 50... para 50 of the judgment. So today, all aspects of teacher's

1 employment, the subordinate staff employment is governed by statute. So therefore, the
2 anxiety of the court, that there should be some mechanism to deal with this is taken care of
3 and this has some bearing on interpretation of the definition of Industry. So these are my
4 submissions, My Lord. Thank you.

5 **CJI SURYA KANT:** Thank you. Thank you, Mr. Naphade. Yes, Mr. Hegde.

6 **SANJAY HEGDE:** Please Your Lordships. I appear for the State of Karnataka in four
7 matters. One deals with the conservator of forests and three are Zilla Parishad matters. I'll give
8 the... I'll give the list Your Lordships.

9 **CJI SURYA KANT:** Forest and?

10 **SANJAY HEGDE:** Zilla Parishad.

11 **CJI SURYA KANT:** Broadly these two?

12 **SHEKHAR NAPHADE:** Before that, I conclude that in respect of forest, I have set out in a
13 small statement that what are the essential statutory duties which are performed through
14 Forest Department. Your Lordships may have... these are statutory obligations.

15 **CJI SURYA KANT:** It may not be exhaustive, but then it can be illustratively helpful.

16 **SHEKHAR NAPHADE:** And the Forest Department deals with the forest produce that's
17 incidental. So therefore something which is incidental can't be taken as the main purpose of
18 the Forest Department. We will also circulate.

19 Sir, last thing, permit me to circulate the Maharashtra Universities Act.

20 **CJI SURYA KANT:** You have already circulated. You have already. It is there with us.

21 **SHEKHAR NAPHADE:** I am told it is circulated.

22 **CJI SURYA KANT:** Just move on.

23 **SHEKHAR NAPHADE:** Grateful.

24 **CJI SURYA KANT:** Yes we have got it. Thank you, Mr. Naphade. Yes, Mr. Hegde.

25 **SANJAY HEGDE:** Please My Lords. I have a short submission to make. My short submission
26 is that today Your Lordships are sitting in nine judges primarily because a unanimous
27 judgment of six judges was overruled, three plus one plus one and two dissents. The
28 unanimous judgment and a clear line was laid down in *Safdarjung*. And, My Lords, if Your
29 Lordship sees the composition of the *Bangalore Water Works* case I think one factor
30 which actually led to the confusion was simply this that there was a retirement pending.
31 Justice Beg, in his judgment, says that I have to give this judgment today because tomorrow I

1 retire. I have some 30 years of assisting at Constitution Benches and sometimes arguing them,
2 and it's been my experience that sometimes these retirements end up with judgments which
3 are given in a hurry and then cause problems later. But for the fact that in **Kesavananda**
4 **Bharati** you had that signed order by nine of the judges. We may have been wandering
5 around trying to figure out what the ratio was. In my experience My Lords, I assisted in **TMA**
6 **Pai** and **TMA Pai** also we had a deadline in as much as Justice Kirpal was to retire. And after
7 that then we had the... because of **TMA Pai** to clarify it we they, we then had **Islamic**
8 **Academy** and **P. A. Inamdar**. Therefore I have only one request first to make my Lords.

9 **CJI SURYA KANT:** That is why I ruled out this kind of stress.

10 **SANJAY HEGDE:** Obligated, My Lords.

11 **JUSTICE B. V. NAGARATHNA:** But he is retiring this year.

12 **CJI SURYA KANT:** Retiring this year.

13 **SANJAY HEGDE:** Obligated, My Lords. And I also take some strength from My Lord Justice
14 Datta's judgement in **Aligarh** where we get to know how Your Lordships conference and it's
15 my request, My Lords, that whenever Your Lordships draw the line Your Lordships draw a
16 straight line. My written submission today is essentially to say... it's an additional written
17 submission, please don't go by the earlier written submission which has been filed. I am sorry
18 please don't go by that, please don't go by the **State of Karnataka** submission which has
19 already been filed. I have an additional one. Please we will air drop. If you don't mind.

20 **INDIRA JAISING:** At 4 o' clock. Cannot submit matter to the court without giving it to
21 Counsel.

22 **SANJAY HEDGE:** No, no, I've just run short of copy, I'll give. I'm sorry, I can't make then.
23 Please, My Lords. My Lords may skip over the first page and let's come straight to the... I'm
24 sorry let...

25 **JUSTICE DIPANKAR DATTA:** This is not part of the compilation?

26 **SANJAY HEGDE:** No, it's not part of the compilation. We'll add it today and...

27 **JUSTICE DIPANKAR DATTA:** Please ensure that these are also given to the...

28 **SANJAY HEGDE:** This will be.

29 **JUSTICE DIPANKAR DATTA:** Not only to Counsel, there are two...

30 **SANJAY HEGDE:** We've given it to the Nodal Counsel, we've given it to the Nodal Counsel.
31 We'll do it. We'll add it, please, My Lords. My Lords, this will take about 10 minutes or I mean

- 1 I'm either which way, My Lords. It may take ten minutes or it may take slightly more. Would
2 Your Lordship...?
- 3 **CJI SURYA KANT:** So, Mr... 10 minutes?
- 4 **SAKET SIKRI:** My Lord, 10 to 15 is what I would request if Your Lordships...
- 5 **CJI SURYA KANT:** 5 to 10 minutes.
- 6 **SAKET SIKRI:** 10 minutes, then that, I'll take 10 minutes.
- 7 **CJI SURYA KANT:** And ten minutes more to all two, three. Mr. Jaideep, are you also there?
- 8 **JAIDEEP GUPTA:** Yes, please for the temple matter, the temple matter.
- 9 **CJI SURYA KANT:** The temple matter.
- 10 **JAIDEEP GUPTA:** The temple has been held to be Industry.
- 11 **PETITIONER'S COUNSEL:** On behalf of AIIMS if Your Lordships permit five minutes.
12 AIIMS, New Delhi.
- 13 **CJI SURYA KANT:** How many minutes Mr. Jaideep you want?
- 14 **JAIDEEP GUPTA:** My Lords, 15 minutes. We are now all giving propositions because the
15 material Your Lordship has seen.
- 16 **CJI SURYA KANT:** You only state arguments.
- 17 **JAIDEEP GUPTA:** Just summarize, 15 minutes.
- 18 **PETITIONER'S COUNSEL:** I appear for the state of *Madhya Pradesh* five minutes
19 without any time. Five minutes.
- 20 **CJI SURYA KANT:** No repetition? 5, 10, This is Mr. [UNCLEAR] he will request 10. 15
21 minutes Mr. Jaideep, 15 Mr. Hegde. Five minutes more here and there.
- 22 **PETITIONER'S COUNSEL:** For research organizations ICMR etc.
- 23 **CJI SURYA KANT:** Rest you can do one thing; you give your small notes we'll take care of
24 that. You can point out that additional point is raised in pursuance of the note we'll take care
25 of that. And please those who are filing note give to the two learned amicus, Mr. Cama and Mr.
26 Sengupta. Both have been kind enough to assist us. Because we have to give time to them also.
27 Mr. Cama would like to have in the end when both sides. I think that will be the ideal. Because
28 then we will request both of you to sum up everything.
- 29 **SAKET SIKRI:** Grateful.

1 **CJI SURYA KANT:** So tomorrow 10:30.

2 **SAKET SIKRI:** Obligated.

3 **CJI SURYA KANT:** Then we can... it can be circulated.

4 **SHADAN FARASAT:** I'll do it immediately through the court master.

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END OF DAY'S PROCEEDINGS