

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)

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- 1 **SANJAY HEGDE:** Yesterday My Lords, I was on the point of what was happening on the
2 21st of February 1978 when ***Bangalore Water Supply*** was... May I draw Your Lordship's
3 attention to paragraph 170 of that judgement because that...
- 4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 1B right?
- 5 **SANJAY HEGDE:** It starts at 2184 PDF.
- 6 **CJI SURYA KANT:** Paragraph?
- 7 **SANJAY HEGDE:** Paragraph 170, Volume V.
- 8 **CJI SURYA KANT:** Volume?
- 9 **SANJAY HEGDE:** Volume V.
- 10 **CJI SURYA KANT:** This is part of the judgement by Justice Chandrachud?
- 11 **SANJAY HEGDE:** I'm sorry My Lords?
- 12 **CJI SURYA KANT:** 170 starts Justice Chandrachud?
- 13 **SANJAY HEGDE:** Justice Chandrachud. This is what he dictated on February 21st, "We are
14 in respectful agreement with the view expressed by Krishna Iyer J. in his critical judgement
15 that Bangalore Water Supply's appeal should be dismissed. We will give our reasons later
16 indicating the area of concurrence and divergence, if any, on the various points in
17 controversy..."
- 18 **JUSTICE B.V. NAGARATHNA:** Yes.
- 19 **SANJAY HEGDE:** I'm sorry My Lords, has all Your Lordships...? Paragraph 170 My Lords,
20 "...the area of concurrence and divergence, if any, on the various points in controversy on
21 which our learned Brother has dealt." And then on the 7th of April 1978, Justice Chandrachud
22 says by a short order which I had pronounced on by behalf of myself and Justice Jaswant Singh
23 and Tulzapurkar.
- 24 **CJI SURYA KANT:** What was the date when para 170 was dictated, Mr. Hegde?
- 25 **SANJAY HEGDE:** That is February 21st.
- 26 **CJI SURYA KANT:** February?

1 **SANJAY HEGDE:** 21st. So because on 22nd of February, Chief Justice Beg was retiring. So
2 therefore the next paragraph...

3 **JUSTICE B.V. NAGARATHNA:** That time Justice Chandrachud had become the Chief
4 Justice when he delivered his opinion, April '78.

5 **SANJAY HEGDE:** Yes.

6 **CJI SURYA KANT:** That's where [UNCLEAR].

7 **SANJAY HEGDE:** Please, My Lords.

8 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What did you say the date was, 20th
9 of?

10 **SANJAY HEGDE:** 21st of February was the first judgement, where they said we broadly
11 agree and if we have divergences we'll say that later and then, you know, on April 7th, Justice
12 Chandrachud said that I agree entirely, but Justice Jaswant Singh and Tulzapurkar have their
13 reservations.

14 **CJI SURYA KANT:** Their judgements also came, their judgments also came in April?

15 **SANJAY HEGDE:** Yes, yes.

16 **CJI SURYA KANT:** According... I mean, that means three judgements or three opinions,
17 one plus two.

18 **SANJAY HEGDE:** 1 +1+1+2, plus for 2. So, there's a dissent of two. Three judges say a rule
19 for Krishna Iyer. Then there is Justice Beg who concurs, and Justice Chandrachud's
20 concurrence, four.

21 **JUSTICE B.V. NAGARATHNA:** Four.

22 **JUSTICE DIPANKAR DATTA:** When the judgement was delivered, four were in the
23 majority already.

24 **SANJAY HEGDE:** They were already in the majority.

25 **JUSTICE DIPANKAR DATTA:** Justice Chandrachud later on agreed with the majority.

26 **SANJAY HEGDE:** With the majority.

27 **JUSTICE DIPANKAR DATTA:** Justice Singh and Justice Tulzapurkar [UNCLEAR] so it's
28 five two later on.

29 **SANJAY HEGDE:** It's five two... I'm sorry, My Lord?

- 1 **CJI SURYA KANT:** Just to know the factual part, the dissenting opinion of two Judges, this
2 also came in April 7th?
- 3 **SANJAY HEGDE:** Yes.
- 4 **CJI SURYA KANT:** Okay, this also came. It's only I just wanted to know.
- 5 **SANJAY HEGDE:** Yes, yes, My Lords, I'm only going by the...
- 6 **JUSTICE B.V. NAGARATHNA:** In fact they are printed in two different places in the AIR,
7 they are not together.
- 8 **SANJAY HEGDE:** Please, My Lords.
- 9 **JUSTICE B.V. NAGARATHNA:** What comes immediately after *BWSSB* is *Maneka*
10 *Gandhi*.
- 11 **SANJAY HEGDE:** Please.
- 12 **JUSTICE B.V. NAGARATHNA:** AIR, then towards the end therefore the other two
13 opinions.
- 14 **SANJAY HEGDE:** So therefore, my limited point was... my limited point was that...
- 15 **CJI SURYA KANT:** Common is, Tulzapurkar and...
- 16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Jaswant.
- 17 **CJI SURYA KANT:** And Jaswant Singh, are common.
- 18 **SANJAY HEGDE:** Please, My Lords. My limited point was that in February, the Bench had
19 a deadline to meet and therefore, it's thinking also had not totally fructified and they... this is
20 the... there were creases which remain to be ironed out. Justice Chandrachud indicated that
21 while we are in broad agreement we may have some differences, then when he saw what the
22 differences were, he said no, I agree with the majority. This is roughly how the conspectus lies.
23 My Lords, the thrust of this submission...
- 24 **CJI SURYA KANT:** This [UNCLEAR] doesn't have any material bearing on the [UNCLEAR].
- 25 **SANJAY HEGDE:** The thrust of my submission, however, is simply this, that a clear
26 unanimous judgement of six judges existed that was *Safdarjung*, that line of thinking in the
27 submission is much more clear. And I am commending for Your Lordships acceptance the line
28 that *Safdarjung* drew over the slightly hazy line that emerged out of *Bangalore Water*
29 *Supply* .

1 **JUSTICE DIPANKAR DATTA:** Mr. Hegde, correct me if I'm wrong. On 21st February 1978,
2 all seven judges spoke in one voice. These three justice...

3 **SANJAY HEGDE:** February, February, February.

4 **JUSTICE DIPANKAR DATTA:** 21st February what is the order recorded by Justice
5 Chandrachud, "we", that means Your Lordship is speaking on behalf of himself, Justice Singh
6 and Justice Tulzapurkar. "We are in respectful agreement with the view expressed by Justice
7 Iyer."

8 **SANJAY HEGDE:** Please, My Lords.

9 **JUSTICE DIPANKAR DATTA:** "We will give our reasons later indicating the area of
10 concurrence and divergence, if any, on the various points dealt with by His Lordship". That
11 means generally there is a consensus with regard to the view expressed by Justice Iyer, maybe
12 in some respects there could be a divergence of opinion, for that the order was reserved. But if
13 later on two judges take a view that we are not agreeing with what we had said on 21st
14 February, 1978, that does not erode the binding precedent of...

15 **SANJAY HEGDE:** I am not saying it is, that I am not saying that it is not a binding precedent.

16 **JUSTICE B.V. NAGARATHNA:** My Learned Brother's observation, that is not so. You see
17 the first paragraph of Justice Jaswant Singh's order.

18 **SANJAY HEGDE:** Please, My Lords.

19 **JUSTICE B.V. NAGARATHNA:** See the first paragraph.

20 **SANJAY HEGDE:** Please, My Lords, may I and in fact I am grateful to my...

21 **CJI SURYA KANT:** You see, this point is also the difference.

22 **JUSTICE B.V. NAGARATHNA:** Only on one aspect. Only on another aspect, callings etc.,
23 noble professions. All professions they...

24 **SANJAY HEGDE:** Please, My Lords. It may be recalled, that is, paragraph 183... after
25 paragraph 183. So, it should have been paragraph 184, "It may be recalled that in the order
26 dated February 21st, '78 pronounced by our learned brother Chandrachud J., as he then was,
27 on behalf of himself, brother Tulzapurkar and myself, expressing our respectful agreement
28 with the view expressed by learned brother Krishna Iyer that ***Bangalore Water Supply***
29 should be dismissed, it was stated we would indicate the area of our concurrence and
30 divergence, if any, later on. Accordingly, we proceed to do that now." So, I'm not joining issue
31 My Lords. I'm just...

32 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We are sitting in 9 Mr. Hegde...

- 1 **SANJAY HEGDE:** Please, My Lords. That's why... no My Lord, so before 9 all I'm saying is...
2 all I am saying is that the clearer view of 6th May which I'll place before Your Lordships may
3 commend itself for Your Lordships' acceptance over what was a slightly muddled, if I may say
4 so, by this 5 to 2 kind of occurrence. My Lord Justice Datta wanted to put something to me?
- 5 **JUSTICE DIPANKAR DATTA:** In the system where we work, even 4 can overrule 5.
- 6 **SANJAY HEGDE:** Yes, yes, yes, I entirely agree. I entirely agree.
- 7 **JUSTICE DIPANKAR DATTA:** In view of *Trimurti Fragrances*, which is a later five-
8 judge bench judgement, it has to be seen what is the numerical strength of the bench.
- 9 **SANJAY HEGDE:** Yes.
- 10 **JUSTICE DIPANKAR DATTA:** No matter there is a 4, 3, 5, 2, 6, 1.
- 11 **SANJAY HEGDE:** Yes, yes, yes.
- 12 **JUSTICE DIPANKAR DATTA:** That should be taken as 7.
- 13 **SANJAY HEGDE:** Yes, yes.
- 14 **JUSTICE DIPANKAR DATTA:** Therefore AMU is taken as 7 overruling *Azeez Basha* of
15 5, although 4 were on the one side, 3 were on the other. It has to be taken as 7. So, please don't
16 labour on this aspect. [UNCLEAR] by 6 and therefore, you know what is... muddy... and where
17 we have to clear the muddy waters. Are you on your own...?
- 18 **SANJAY HEGDE:** Please, My Lords. If Your Lordships kindly let me place paragraph... page
19 number 2 of my submission.
- 20 **JUSTICE DIPANKAR DATTA:** It's in Volume 1 or 1A?
- 21 **SANJAY HEGDE:** 1A. Volume VI. Appellant's folder, My Lords, it was added to. And I...
22 yesterday I gave a separate...
- 23 **JUSTICE B.V. NAGARATHNA:** This has been uploaded?
- 24 **SANJAY HEGDE:** Volume VI in the Appellant's folder I'm told. Further written
25 submissions.
- 26 **JUSTICE B.V. NAGARATHNA:** Maybe if you gave the copy.
- 27 **SANJAY HEGDE:** Please, My Lords. I have given the hard copy yesterday.
- 28 **JUSTICE B.V. NAGARATHNA:** Yes.

1 **SANJAY HEGDE:** It's in the drive apparently. "Between the six-judge bench in *Safdarjung*
2 and the seven-judge bench in *Bangalore Water Supply* lies at the heart of the present
3 reference. A systematic comparison on each key issue demonstrates that the *Safdarjung*
4 reasoning was more faithful to the statutory text and the BW... the *Bangalore Water*
5 *Supply* majority erred in overruling it." On the doctrine of *noscitur a sociis* and the meaning
6 of undertaking, I have put out the essence of what Justice Hidayatullah said. "The court held
7 that industry must take its colour from the definition and that a workman is to be regarded as
8 one employed in an industry only if he's following one of the vocations mentioned in
9 conjunction with his Employer's vocation. An industry is to be found when the employers are
10 carrying on any business trade, undertaking, manufacture or calling. If they are not, there is
11 no industry. Applying the principle of *noscitur a sociis*, the court held that undertaking must
12 be analogous to trade or business and must result in material goods or services. The court drew
13 a crucial distinction between material services involving cooperative effort between employers
14 and employees to provide the community with commercially valuable services such as electric
15 power, water transport and mail delivery. And the services of professionals such as doctors,
16 teachers and lawyers which depend on individual intellectual skill and are not material sense
17 in services in the relevant sense." At paragraph 25, the court held, "The observations in the
18 Australian Court only indicate that in those activities in which government takes to industrial
19 ventures, the notion of profit making and the absence of capital in the true sense of the word
20 are irrelevant. The passage itself shows that industrial disputes occur in operations in which
21 employers and employees associate to provide what people want and desire. In other words,
22 where there is production of material goods or material services. In our judgement, the
23 *Hospital Mazdoor Sabha* took an extreme view of the matter which was not justified." To
24 compare Justice Krishna Iyer, "Justice Krishna Iyer rejected the application of *noscitur* to the
25 definition holding that the words used had been deliberately used and could not be cut down
26 by the narrower words. Undertaking was interpreted to cover any organized activity regardless
27 of whether it bore a commercial character. The concurring opinions of Beg C.J. and
28 Chandrachud J took a narrower view bearing in mind the collocation of terms and the doctrine
29 of *noscitur* as pointed out in State, coupled words must be understood in their cognate sense."
30 It is my submission that *Safdarjung* is textually and logically sound. The word...

31 **CJI SURYA KANT:** You are supporting *Safdarjung*?

32 **SANJAY HEGDE:** Please My Lord, I support *Safdarjung*. Then My Lords, on the
33 relationship between the two parts of the definition, "In *Safdarjung*, Hidayatullah J.
34 examined the *Madras Gymkhana Club* approach which had attempted to keep the two
35 parts separate and disagreed. He held that there was no need to view the definition in two
36 separate parts. The definition read as a whole denotes a collective enterprise in which

1 employers and employees are associated. An industry accord exists only when there is a
2 relationship of employers and employees, with the former engaged in business trade,
3 undertaking, manufacture or calling and the latter following any calling, service, employment,
4 handicraft or industrial occupation or avocation. The two parts are two counterparts in one
5 industry, not independent definitions." It's like two arms of a claw, they both have to work
6 together. "The second part does not stand alone in defined industry, it describes the activities
7 of workmen within an industry established by the first part. In **Bangalore Water Works**,
8 the majority accepted that the definition is in two parts but then departed from **Safdarjung**
9 in the application. While **Safdarjung** held that both parts must co-exist, the employer must
10 be carrying on a business trade, undertaking, manufacture or calling and the workman must
11 be employed therein. The water supply majority held that the inclusive second limb
12 independently expanded the definition to cover any calling, service employment of workmen.
13 The effect was to render the first part, the employer's occupational requirement practically
14 otiose." Again, My Lords, I support **Safdarjung** because that is more respectful of the
15 statutory architecture.

16 Please My Lords, "on whether the profit motive", if Your Lordship turns over the page. "On
17 whether the profit motive and commercial character are relevant, in **Safdarjung** while
18 accepting that the profit motive is not an essential ingredient, the court held that the enterprise
19 must nonetheless be analogous to business in the commercial sense. The elimination of profit
20 motive does not mean that every non-commercial, non-productive activity became an
21 industry. The court held that **Safdarjung Hospital** was not embarked on an economic
22 activity analogous to trade or business. It was a government department providing medical
23 facilities and hence not an industry. Similarly, the Tuberculosis Hospital being a Research and
24 Charitable Institution could not be described as an industry. The Holy Family Hospital being
25 entirely charitable with income mostly from donations and surplus distribution prohibited,
26 was also held not to be an industry."

27 **JUSTICE DIPANKAR DATTA:** Mr. Hegde, just one minute.

28 **SANJAY HEGDE:** Yes, My Lords.

29 **JUSTICE DIPANKAR DATTA:** Come back to your page 3 submission, "If the inclusive part
30 were to stand independently, the means part would serve no purpose."

31 **SANJAY HEGDE:** Please my lords,

32 **JUSTICE DIPANKAR DATTA:** What is the definition of industrial dispute?

33 **SANJAY HEGDE:** Industrial dispute it's in 2(j), My Lords, simply.

34 **JUSTICE DIPANKAR DATTA:** What is the definition?

- 1 **SANJAY HEGDE:** Any calling, vocation.
- 2 **JUSTICE DIPANKAR DATTA:** Dispute between whom?
- 3 **SANJAY HEGDE:** I'm sorry. Between dispute, I'm sorry I was...
- 4 **JUSTICE DIPANKAR DATTA:** First is dispute between Employers and Employers.
- 5 **SANJAY HEGDE:** Yes, My Lord.
- 6 **JUSTICE DIPANKAR DATTA:** That is included. Dispute between Employers and
7 Employers, that is the first. Employers and Workmen, second and Workmen and Workmen.
8 So therefore, if there is a dispute between Employers and Employers it is only the means part
9 which has to be considered, not the inclusive part. So therefore, there is a basic fallacy in your
10 submission, that if we give a wider meaning to the including part, the means part becomes
11 redundant. That is not so, because industrial dispute meaning takes within its fold dispute
12 between Employers and Employers.
- 13 **SANJAY HEGDE:** The dispute...
- 14 **JUSTICE DIPANKAR DATTA:** Yes, come to your next point.
- 15 **SANJAY HEGDE:** Please, My Lords. I take that point if I may attempt to answer it right
16 away. We are concerned with the definition of industry and we've given those two.
17 Employers...
- 18 **JUSTICE DIPANKAR DATTA:** We first have to see what is an industrial dispute, what is
19 the title of the Act, Industrial Disputes Act.
- 20 **SANJAY HEGDE:** Please, My Lords.
- 21 **JUSTICE DIPANKAR DATTA:** You can't read industry without understanding what an
22 industrial dispute is. Unfortunately, yesterday, none of the Senior Counsels referred to us to
23 any provision of the Act. We are interpreting the Act.
- 24 **SANJAY HEGDE:** Please My Lords, and the Act as a whole.
- 25 **JUSTICE DIPANKAR DATTA:** So, you have to first understand what is an industrial
26 dispute. You go on reading industry, workmen, but without understanding what is the gist of
27 industrial dispute.
- 28 **SANJAY HEGDE:** Please, My Lords.
- 29 **JUSTICE DIPANKAR DATTA:** I just only wanted to point out that the submission which
30 you have indicated there...

- 1 **SANJAY HEGDE:** It's too broadly framed.
- 2 **JUSTICE DIPANKAR DATTA:** May not be.
- 3 **SANJAY HEGDE:** I'll consider it and I'll...
- 4 **JUSTICE DIPANKAR DATTA:** You're [UNCLEAR] of response, consider it and then...
- 5 **SANJAY HEGDE:** Please My Lords, please My Lords.
- 6 **CJI SURYA KANT:** One was sovereignty and the other one triple test.
- 7 **SANJAY HEGDE:** Please My Lords, on the profit motive and sovereignty. I was placing the
8 profit motive part, some of Your Lordships have read it faster than some of...
- 9 **CJI SURYA KANT:** Profit motive, I think the *Water Supply* appears to be correct view
10 that element of profit motive is irrelevant.
- 11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Correct. There are some instances
12 where it has come...
- 13 **SANJAY HEGDE:** My submission is that, while profit it need not be the purpose of the
14 activity, but the activity still must bear an analogy to trade business... trade or business in
15 character.
- 16 **CJI SURYA KANT:** Suppose the state establishes an industrial unit, with a clear declaration
17 that the primary objective is to generate employment for the people, not to earn profit. It may
18 not be an industrial unit earning profit, but at the same time it is an industry.
- 19 **SANJAY HEGDE:** Or, I'm just taking the example slightly further, My Lords. There are many
20 charitable activities which are also organized somewhat analogous to commerce. We see these
21 people who keep coming to us for donations. They are registered companies, they have call
22 centres and everything. If it is analogous to commerce, that would be the test.
- 23 **CJI SURYA KANT:** That is the minority opinion.
- 24 **SANJAY HEGDE:** Please, My Lords.
- 25 **CJI SURYA KANT:** Ultimately, we will examine while sitting in nine, because Justice
26 Jaswant Singh has only disagreed only on the point of hospital and charitable activities.
- 27 **SANJAY HEGDE:** And also...
- 28 **CJI SURYA KANT:** It angles to the point. It is very well-known decent language, he writes,
29 "Give respect and then straight come on the point."
- 30 **SANJAY HEGDE:** Please, My Lords.

1 **JUSTICE JOYMALYA BAGCHI:** Mr. Hegde, the distinction on profit between
2 ***Safdarjung*** and ***BWS*** is not one of substance, but of degree, where ***BWS*** particularly Justice
3 Iyer, puts charitable institutions also within the fold of industry.

4 **SANJAY HEGDE:** Please, My Lords.

5 **JUSTICE JOYMALYA BAGCHI:** Both in ***Safdarjung*** as well as Justice Jaswant's dissent,
6 charitable, if you find... Justice Iyer categorized charitable into A, B and C, one where the
7 production of value is used for altruistic purposes, one where commercial activity but it is non-
8 profit, and one where entirely it is spiritual and entirely charitable, where people engage with
9 the motive of spiritual salvation. That is the sliver of exception which Justice Iyer makes. But
10 Justice Jaswant Singh gives it a much wider sweep. So, the basic difference is there. It's one of
11 degree, as to where we put in the exception to analogous to trade and commerce.

12 **SANJAY HEGDE:** Please, My Lords. Ultimately, in my most respectful submission and that
13 is what the task is before this Bench. Where do you draw the line, and how thick a line do you
14 draw? That is essentially the task. Because, given the definition has been interpreted so widely,
15 and also because we are now dealing with a series of transactions between water... a 40-year
16 period between ***Water Works*** and today, at almost half a century. While yes, I am grateful
17 My Lords life and commerce have changed in these years. So has... Is it safer? That's my
18 respectful submission. To go back to the line which was drawn in ***Safdarjung*** where the
19 balance was that if it is analogous to commerce, if you run it on business lines, that may be the
20 inarticulate major premise there. If you run it on business lines then industrial action and
21 resolving it in an industrial manner is also incumbent upon that enterprise. That was the line
22 that was drawn in ***Safdarjung***, My Lords. And what ***Bangalore Water Works*** did,
23 essentially, was to say, look, this definition is a very wide definition. It includes undertaking.
24 And undertakings can be almost of any kind. Now, if Parliament has chosen a wide definition,
25 we will not attempt to draw it down or limit it in any manner. There My Lords, the respectful
26 submission is that in any statute or in life, words have to have a meaning beyond which they
27 cannot be extended. An idea cannot be infinite. So therefore, what does the Industrial Disputes
28 Act really do? The Industrial Disputes Act, in my most respectful submission, addresses how
29 enterprises are to be run in conjunction between Employer and Employee. And if a dispute
30 arises, how is it to be resolved? In fact, even the 1952 judgement, ***Banerjee*** which started all
31 this, My Lords, again, in terms of economic history. In 1952, we had started off on a socialistic
32 pattern of society, where the Soviet Union was, at that point of time, one of the dominant
33 ideologies in the world. In Britain, you had the Labour government, and in 1952 this court said
34 that look, we think that this Act of '49 should be... should receive a reasonably expansive
35 definition. And after all, there is that paragraph there. It is up to the government whether to
36 refer it or not.

1 **JUSTICE JOYMALYA BAGCHI:** *Banerjee* was dealing with a municipal body.

2 **SANJAY HEGDE:** It was with the municipal corporation.

3 **JUSTICE JOYMALYA BAGCHI:** It was dealing with the municipal body and the question
4 in *Banerjee* will be relevant for our second question as to whether essential public functions
5 when performed by local bodies would become inalienable sovereign function.

6 **SANJAY HEGDE:** Please, My Lords.

7 **JUSTICE JOYMALYA BAGCHI:** There are concentric circles of state function. One is an
8 inalienable core sovereign function. Then is the penumbral circle of statutory functions and
9 constitutional duties. And finally is the welfare model of the government. So where do we
10 reposit the sovereign exception when it comes to the definition of undertaking in industry,
11 even if the two other tests are satisfied? That is the next question which you need to address.

12 **SANJAY HEGDE:** And Chief Justice Beg, attempted to say that we should not necessarily
13 look at sovereign functions in that sense. We should call them governmental functions. That's
14 what Chief Justice Beg dictated just the day before his retirement. Because governments do
15 undertake a vast variety of functions. Justice Krishna Iyer says there are three core functions.

16 **JUSTICE JOYMALYA BAGCHI:** If Justice Beg's issue is, please correct me if I'm wrong,
17 was more on the nature of the contract of employment. He said, "wherever the contract of..."
18 His Lordship said, "wherever the contract of employment is governed by Article 311, and in
19 these sort of discharge of duties, we will not bring in the concept of industry, labour and
20 capital."

21 **SANJAY HEGDE:** Please, My Lords.

22 **JUSTICE JOYMALYA BAGCHI:** Because at that time we just had the Doctrine of Pleasure
23 being more rationalized into some due process. So he brought in that, that Article 310 and 311
24 governing the employment contracts of public servants would be an exception to the industry
25 definition more than the sovereign function which was interpreted by....

26 **SANJAY HEGDE:** So he actually says let's....

27 **JUSTICE JOYMALYA BAGCHI:** Incidentally sir, Justice Jaswant Singh's dissent is not a
28 dissent on sovereign function. It is a dissent on welfare, it is on the charitable institution and
29 professional bodies.

30 **SANJAY HEGDE:** Please, My Lords. So that only illustrates what I meant by the line once it
31 was drawn, then there are variants which are brought in.

32 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What's your take on sovereignty?

1 **SANJAY HEGDE:** As far as sovereign...

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Your next point.

3 **SANJAY HEGDE:** Please, My Lords. On sovereign functions My Lords, my submission is...

4 **CJI SURYA KANT:** 24(1)(a)(b) explained well.

5 **SANJAY HEGDE:** I'm sorry?

6 **CJI SURYA KANT:** Your para 24(a)(b).

7 **SANJAY HEGDE:** Please My Lords, I am still around... "It is submitted that sovereign
8 function in the Indian context must encompass the inalienable legal functions, legislation,
9 administration of justice, defence and maintenance of law and order. Functions mandated by
10 the Constitution to be discharged by the State, including those under the Directive Principles:
11 Public Health and Education and Rural Development, regulatory and supervisory functions
12 discharged by Statutory Bodies established by the government for the promotion and
13 development of particular sectors, functions discharged by Panchayati Raj institutions under
14 Part IX," My Lords. Your Lordship, Justice Narasimha was asking me anything in terms of
15 illustration or in terms of fleshing out the idea more. The prime...

16 **JUSTICE B.V. NAGARATHNA:** Do you want to expand the definition of sovereign
17 functions?

18 **SANJAY HEGDE:** The limited glimpse of sovereign functions which has been approved by
19 the majority in *Bangalore Water Works* is too limited. It is almost what is called the regal
20 functions. Government is much more than that and the government necessarily has to step in,
21 in areas like regulation, in areas like planning, which nobody else can do. The government...
22 somebody making a roads maybe an industry. But planning a road, acquiring property,
23 acquiring land for that, all that necessarily the government has to do. And those functions
24 would not necessarily, while not regal in that sense, would not necessarily... would have to be
25 included in governmental functions and which would be outside. So Justice Beg... Chief Justice
26 Beg, there also said that wherever there are rules, wherever there are government rules for
27 government servants and all that, those will be exceptions to the Industrial Disputes Act.

28 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Mr. Hegde?

29 **SANJAY HEGDE:** Please, My Lords.

30 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You don't need to labour so much
31 about sovereignty.

32 **SANJAY HEGDE:** Please, My Lords.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** For the simple reason that the section
2 doesn't have sovereignty exactly you are dealing with. It is only in the context of exclusion,
3 right? We have moved away from the concept of the so-called sovereignty then we have given
4 so many judgements where the government enters into a Contract or commerciality or
5 undertakings and so on with respect to the railways. We have laid down the law, that it can't
6 claim immunity or sovereignty. That sovereignty is a very, very, very limited stretch that we
7 would have, and even that in the present context we would say even space is given on Contract.
8 So we can limit that to very limited extent, but we have to deal with other aspects of the matter.
9 Sovereignty doesn't really pose much of a problem to the latest cases.

10 **JUSTICE B.V. NAGARATHNA:** Article 299 and 300 of the Constitution permits the
11 Government and the State to enter into Contracts like any other and entrepreneur.

12 **SANJAY HEGDE:** Please, My Lords.

13 **CJI SURYA KANT:** Your para 24, (b), (c) and (d), don't think that (b), (c) and (d) unless
14 they become part of the sovereign function, they will be trapped in the definition of industry.
15 It's all independently that can be examined, that has nothing to do with it. These (b), (c) and
16 (d) can still be excluded from the ambit of industry even without being included in sovereignty.
17 It all depends upon.

18 **SANJAY HEGDE:** What Your Lordship, the Chief Justice is putting to me is that the
19 interpretation can be contextual. It is contextual... Please My Lords.

20 **JUSTICE B.V. NAGARATHNA:** Section 2 definition clauses of all statutes says, "unless the
21 context otherwise requires." Nobody reads that phrase. There is evidence of this court on that.
22 Even here it is, "unless the context otherwise requires," industry means this.

23 **SANJAY HEGDE:** Your Lordship has tempted me to use an illustration which is pertinent
24 to this month, the holy month of Ramadan. What happened was that Mirza Ghalib was once
25 asked, Mirza Naushad, '*kitne rozey rakhe*'? So he said, '*huzoor, ek na rakhaa*'. So, there in
26 context it could mean both things. It could mean that I slipped one or that I did not keep
27 anyone. So, a lot of interpretation is entirely contextual and in the context of which the
28 Industrial Disputes Act is set. What it essentially contemplates is enterprise, which is
29 analogous to a commercial activity where any business trade, undertaking, manufacture or
30 calling of employers and it on the employee side it has to be their calling service employment,
31 handicraft, industrial occupation or avocation, My Lords. Since Your Lordships have gone
32 through the submission I will not... Grateful, My Lords.

33 **CJI SURYA KANT:** Yes, yes, Mr. Farasat.

1 **SHADAN FARASAT:** My Lords, I appear for the State of Punjab. The written submissions
2 is... I appear for the State of Punjab. Your Lordships will only refer to my written submission,
3 I won't take My Lords through anything else.

4 **CJI SURYA KANT:** Now you don't have to read, only your former Union.

5 **SHADAN FARASAT:** There are two questions which arise before My Lords conceptually,
6 even before My Lords go into the question of interpretation. One is do My Lords consider
7 limiting **BWSSB** at the core definition itself? In which case the necessity of carving out
8 exceptions like sovereign function etc. may not at all be necessary. That's the first question of
9 approach as to how Your Lordships want to engage with that question. I comment that Your
10 Lordships should consider restricting the definition itself and therefore even the second and
11 the third question may not even be required to be answered if My Lords were to possibly go
12 down that line. That's my Submission 1.

13 Submission 2 is that insofar as the definition or the triple test in **BWSSB** is concerned, that is
14 in my respectful submission not wrong, but really incomplete. So, what I am proposing to the
15 court is that Your Lordships will take the triple test in para 140(a) as it is, and add limiting
16 principles to that which will sufficiently restrict the over expansionist tendency, if I can use
17 that phrase, of overbreadth. That's a better word My Lord, I stand corrected, overbreadth of
18 the definition which has been given in **BWSSB**. My Lords will have with that opening, Your
19 Lordships will have the two additional tests that I propose and we have taken this from what
20 was already there in the law. It's not as if we have... it was already there in the law, we've just
21 restructured it slightly. In para 3 of my written submission, My Lords will have that. I've tried
22 to form it.

23 **CJI SURYA KANT:** [UNCLEAR].

24 **SHADAN FARASAT:** Yes. So this is triple test plus these two is what I'm proposing to the
25 court. My Lord, number one, "The enterprise entity must be an entity with a commercial
26 objective or at least an entity with objective analogous to trade and business in a commercial
27 sense." The underlined portion is directly borrowed from **Safdarjung** . My Lords, we have
28 consciously here not used profit because profit is a slightly more aggressive term. When State
29 entities go they may not have an avowed specific objective of profit, but they may nevertheless
30 be organized like commercial entities. It will still cover those.

31 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What's the next?

32 **SHADAN FARASAT:** Second My Lords, "(b) is Industries limited to services that primarily
33 operate through physical/manual labour." Why I say this I must rely, and this is another
34 matter where Your Lordships because of the open-textured nature of the text in the Act. My

1 Lords will use the text as a beginning point, but at some point will have to bring in policy
2 implications to contain the text. The text cannot be the guiding right till the end, but in how I
3 say the second point is that the word 'manufacture' has been used in the definition of Industry.
4 And the word... I rely on that phrase and the regular principles of *ejusdem generis* and *noscitur*
5 *a sociis*. Manufacture means employees in production of goods physical and manual labour.
6 Similarly, it envisages services which are of a nature which primarily employ physical and
7 manual labour, not necessarily intellectual services. That's my respectful submission for the
8 court. So if Your Lordships cut it out at this these two things the core problems of the
9 overbreadth of **BWSSB** potentially can be dealt with by reducing the definition itself.

10 Now there's also an additional aspect of the entire question of industrial dispute arose with
11 the Industrial Revolution. The context of industries in England in particular and the working
12 conditions therein. The question of expanding it to services just because the word "services"
13 has been used may be slightly out of context, especially intellectual services, professional
14 services. So I rely on the word "manufacture" to limit the term "services" which is used in the
15 latter part of the definition. So both policy and engagement will employ on that as also the
16 text, I'm requesting both to be employed for that conclusion to be reached. Now what is the
17 effect of this? Kindly have my para 7, 8, 9 and 10 on page 2. Now My Lords, kindly have para
18 7 -- "non-commercial enterprise whether governmental or private which includes charitable
19 will stand excluded from the definition of industries." Para 8, "Professional services of all kinds
20 including lawyers, doctors, chartered accountants, company secretaries, professional
21 consultancies will also stand excluded from the definition of industry. However, where the
22 government enters on a commercial enterprise either through a PSU or otherwise..." There's
23 been a PSU-fication of private endeavour by government. Whenever Government enters in a
24 private kind of activity normally through PSU but not necessarily it may enter otherwise as
25 well. That will be excluded... that will be included in the definition of industry still, so state is
26 not fully excluded when it enters the commercial enterprise.

27 (d), para 10. "The introduction of the limiting principle of commercial activity will also ensure
28 that all governmental activities which are pursuant to Part IV of the Constitution, that is the
29 Directive Principles of State Policy are *ipso facto* excluded unless the Government chooses to
30 carry them out on commercial terms either directly or through its agencies. One instance of
31 such activity that would be covered is the supply of electricity by the Government at
32 competitive market rates." For instance, all states have distribution companies. Tariffs are
33 fixed on market bases based on this thing. They will definitely be covered under this definition.
34 Why should they not be covered? So, my respectful submission is State will also get bifurcated
35 based on activities not profit motive but commercial... aligned along commercial lines. That's
36 the submission. Now My Lords, the concern of the court is...

1 **JUSTICE B.V. NAGARATHNA:** On commercial why do you say it's a different thing
2 whether they are making profits or losses.

3 **SHADAN FARASAT:** That's correct.

4 **JUSTICE B.V. NAGARATHNA:** That's a different thing.

5 **SHADAN FARASAT:** That's right. So it's aligned along it's...

6 **JUSTICE B.V. NAGARATHNA:** They will not write in their objection that incorporation
7 that this company is Section 617 company, government company under the old Act.

8 **SHADAN FARASAT:** Absolutely. That's exactly why I've suggested this, yes.

9 **JUSTICE B.V. NAGARATHNA:** Aims and objects will not see not to earn profit nobody
10 will write that.

11 **SHADAN FARASAT:** Exactly, exactly.

12 **JUSTICE B.V. NAGARATHNA:** It's incidental.

13 **SHADAN FARASAT:** That's right, absolutely.

14 **JUSTICE B.V. NAGARATHNA:** My Lord, the Chief Justice said it is incidental whether it
15 actually earns or not.

16 **SHADAN FARASAT:** I'm grateful, yes.

17 **JUSTICE B.V. NAGARATHNA:** At the starting itself they will not say this is not to earn
18 profit.

19 **SHADAN FARASAT:** Yes.

20 **JUSTICE B.V. NAGARATHNA:** That is quite illogical.

21 **SHADAN FARASAT:** And para 11 then, "The incorporation of the above two limits makes it
22 unnecessary to specifically come out of sovereign function exception or to provide a category-
23 wise list of exclusions." My Lords, that's what I began with. So, if Your Lordships were to limit
24 by this or some other test, whatever My Lords think fit, then it may not be necessary to go into
25 that list wise item which is a far more cumbersome process and also open to more litigation in
26 my respectful submission. Then My Lords will have the concerns. The concerns can be what
27 will happen to these areas which are excluded. That's the obvious concern which faces the
28 court. I have tried to answer that in para 12 onwards. Firstly, insofar as governmental
29 employees are concerned, right from Class IV employees till Class I employees, everyone is
30 covered by either a statute... either a rule under Article 309, or a service law enacted under
31 Entry 70 List 1, or Entry 41 List 2, or some executive order which is there pursuant to that. So,

1 service law covers even a Class IV employee if he's a employee of the government. So, there is
2 and there the protections will be better than the Industrial Disputes Act, so that's not a
3 concern. Then the next question is what if the government is employing somebody
4 contractually.

5 **JUSTICE DIPANKAR DATTA:** A 226, court will examine facts, Mr. Farasat?

6 **SHADAN FARASAT:** I'm sorry, My Lord?

7 **JUSTICE DIPANKAR DATTA:** A 226 court will examine facts?

8 **SHADAN FARASAT:** Normally...

9 **JUSTICE DIPANKAR DATTA:** [UNCLEAR] and analyse evidence? No.

10 **SHADAN FARASAT:** I'm grateful for the question. May I answer that?

11 **JUSTICE DIPANKAR DATTA:** A Tribunal's power is much limited. Krishna Iyer's own
12 judgement says that if an inquiry is found to be defective, faulty, the employer gets the chance
13 to prove the charges before the Tribunal? Where do you get it in 226? Where do you get it
14 before a Tribunal?

15 **SHADAN FARASAT:** May I answer that? Well, firstly, Service Law will have both Central
16 Administrative Tribunal and State Administrative Tribunal. Most of them will be covered
17 under that, normally. So normally writ proceeding will not be the first proceeding. There could
18 be cases where there is not notified, so writ proceeding will be an exception for government
19 employees because State Administrative Tribunals will also cover them. That's point one. And
20 second, the service law today is so well developed, Your Lordships, in single judges, if there is
21 anything wrong, the courts normally interfere every day. So, that area of law is now, at least in
22 2026, is very heavily developed in favour of the employee. All rights exist. So it's not as if
23 anything is going to be missed out. I respectfully submit is better than the IT (Industrial
24 Tribunal) Act - dispute settlement mechanism.

25 **JUSTICE SATISH CHANDRA SHARMA:** There you are wrong, sir.

26 **JUSTICE B.V. NAGARATHNA:** No, no, even in the case of...

27 **JUSTICE SATISH CHANDRA SHARMA:** Before the State Administrative Tribunal or the
28 Central Administrative Tribunal, the employer doesn't get a chance to prove misconduct. The
29 way it can be proved before the Industrial Tribunal. That option is not there.

30 **SHADAN FARASAT:** So, that's something to the negative of the employer in that case, that's
31 something... certainly not to the detriment of the employee.

1 **JUSTICE B.V. NAGARATHNA:** In respect of a public sector unit if he comes within the
2 definition of workman, then he will go to the Labour Court or the Central Industrial Tribunal.
3 If he is not a workman then what happens in terms of a suit?

4 **SHADAN FARASAT:** Suit or a writ, My Lord, either of them.

5 **JUSTICE B.V. NAGARATHNA:** But a workman...

6 **JUSTICE DIPANKAR DATTA:** And if he goes by a suit, Section 14 would be a bar. There
7 cannot be enforcement of contract or personal service. He will only be entitled to damages. He
8 doesn't get an order of reinstatement in service, which is the power of the Tribunal to grant.

9 **SHADAN FARASAT:** I'll address that question as well. I'll address that in my note. There is
10 some protection which is offered. Second question is, My Lords will have para 4 of my note.
11 Page 4, para 15.

12 **JUSTICE DIPANKAR DATTA:** Yes.

13 **SHADAN FARASAT:** Insofar as professional services are concerned, there is some level of
14 regulatory oversight by various acts. I've put them in para 15. Advocates Act, Dentist Act,
15 Medical Professional, Chartered Accountant, Company Secretaries, of course they regulate the
16 profession itself, not things ancillary to it, but there's some level of protection and regulation
17 already there. It's not as if they're completely unregulated, number one. Number two, what we
18 discovered was that Shops and Establishment Act which have been passed by various states,
19 these are state legislations, bring within themselves both charitable institutions as well as
20 professions. I have given two definitions at the bottom of page 4. Page 4 bottom. Page 4
21 bottom, this is the definition in Delhi and over the page is West Bengal.

22 **JUSTICE B.V. NAGARATHNA:** Yes, Clerical also. They all can...

23 **JUSTICE DIPANKAR DATTA:** Clerical is also there. [UNCLEAR] supervise it.

24 **JUSTICE B.V. NAGARATHNA:** Yes, if there's anything beyond this then he goes to suit.

25 **JUSTICE DIPANKAR DATTA:** I read it like [UNCLEAR] so that I remember them.

26 **CJI SURYA KANT:** So, the ultimate conclusion is para 16?

27 **SHADAN FARASAT:** That's right. So what I'm saying is Shops and Establishments Act, now
28 just have page 11 and 12. What's the nature of protection? Because professions and even
29 charitable are considered, kindly have page 11 and 12, page 11 bottom chart. "Minimum age of
30 workers, maximum hours of employment," page 12 "payment of overtime, opening and closing
31 hours, weekly holidays, timely payment of wages, leave, condition of premises, protection
32 regarding dismissal, procedure for disputes." Even there is a procedure for dispute that in

1 some cases it goes to a magistrate, in other cases there is some kind of authority with appellate
2 authority and those professions are covered. So even somebody who is not a professional, say
3 somebody who is doing sweeping services in a in a professional's office, will be covered under
4 this. Of course, every state it differs a little bit, but broadly there's some kind of a coverage. It's
5 not as if this aspect was never examined in **BWSSB** because it was not placed before the court.
6 That state legislature, these are all 50s legislations, most of them, but they were never placed
7 before the court. Their professional services are already regulated with some level of
8 protection, therefore no need to expand the definition. Then My Lords...

9 **CJI SURYA KANT:** We understand your argument, that there is a set of employees or
10 workers who are already protected in terms of their conditions of service under different
11 statutes. And therefore, there was no need to stretch or expand the provisions of ID Act to
12 bring under this umbrella.

13 **SHADAN FARASAT:** I'm grateful to the Chief Justice. So, that's the submission, what I
14 respectfully submit. That's really the conclusion I would say this. My Lords, **BWSSB** sought
15 a solution by this over-broad definition for problems, that was a solution looking for a
16 problem. Solution looking for a problem. Your Lordships can restrict it to the solution for
17 where the real problem arises and that My Lords can do by restricting the definition itself and
18 then Your Lordships need not go into the exception. That's my short submission. I'm grateful.

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

20 **JAIDEEP GUPTA:** I appear for the Commissioner of Hindu Religious and Charitable
21 Establishments in State of Tamil Nadu, who is overall in charge of literally hundreds of temples
22 in the state. Now the short point which arises in these appeals, and not all of these points are
23 before Your Lordship today, because the only point before Your Lordship today is what is the
24 scope of 2(j). But what the full bench has done is to say that, "Temples are an industry within
25 the meaning of the Industrial Disputes Act. So therefore, it is an establishment within the
26 Shops and Establishments Act." And there is a judgement of Your Lordship, a line which is
27 followed which says that "If it is an industry, it is an establishment within the meaning of the
28 Shops and Establishments Act." So therefore the payment of Gratuity Act of the Central Act
29 will apply. And the corresponding provisions which has been put in place by the State that will
30 not apply. This is My Lord, in one line the factual background of the matters in which I appear.
31 There are several parties there, but the Commissioner is concerned with all the Parties.

32 **JUSTICE B.V. NAGARATHNA:** They may also tell you the full Bench judgment, which I
33 have authored in Karnataka. Karnataka Hindu religious and Charitable Endowment, whether
34 this payment of gratuity where we said a temple is not a commercial establishment within the
35 meaning of Shops and Commercial Establishments Act of Karnataka.

1 **JAIDEEP GUPTA:** Yes, correct, My Lord. But the full Bench of the Madras High Court has
2 referred to other High Court judgements where temples have been held to be industry. And
3 for instance the Jagannath Temple, the Orissa High Court held it was industry. That's the line
4 followed and that is followed My Lord on the basis of...

5 **JUSTICE B.V. NAGARATHNA:** In what does it come under undertaking then?

6 **JAIDEEP GUPTA:** Sorry, My Lord?

7 **JUSTICE B.V. NAGARATHNA:** Undertaking, within the meaning of 2(j). Does the temple
8 come under undertaking?

9 **JAIDEEP GUPTA:** Yes, I'm now coming to how this matter has come before Your Lordship.
10 The question is therefore, what is the scope of 2(j)? If it is not within 2(j), then this logic will
11 not work, you will not be able to go through the route of 2(j) into Shops and Establishments
12 Act. Only this question arises as far as I am concerned, because any other question does not
13 require a reference to nine judges. That Your Lordship will refer to a smaller bench after Your
14 Lordship has taken a call on 2(j). Now therefore, I am addressing Your Lordship only on the
15 first issue. Three issues... four issues Your Lordship have framed. I'm only interested in the
16 first one and not on the sovereign function issues that Your Lordships have framed in 2 and 3.
17 Now My Lord, what the Bangalore Water....

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Mr. Gupta, your Written Submission
19 is in?

20 **JAIDEEP GUPTA:** Yes, my Written Submissions are in Volume VI, but I'm handing out, My
21 Lord, physical copies as well because Your Lordships may want. Now, I'm not arguing by
22 reading the Written Submissions.

23 **JUSTICE JOYMALYA BAGCHI:** You are appearing for the Devasthanam.

24 **JAIDEEP GUPTA:** The Commissioner. The Commissioner is the overall in charge.

25 **JUSTICE JOYMALYA BAGCHI:** Arulmigu. Arulmigu Devasthanam.

26 **JAIDEEP GUPTA:** So, My Lord, Arulmigu is the common title to all temples.

27 **JUSTICE JOYMALYA BAGCHI:** We just wanted which one.

28 **JAIDEEP GUPTA:** Not one, not one. The Commissioner is overall in charge of all the... not
29 all temples in Tamil Nadu, but most temples in Tamil Nadu.

30 **JUSTICE JOYMALYA BAGCHI:** This is the Written Submission relating to which one?

31 **JUSTICE B.V. NAGARATHNA:** Honourable.

1 **JAIDEEP GUPTA:** Yes, Your Lordship, Shri Shri that kind of thing. So all Tamil temples
2 have Arulmigu in front of it. Now, whatever I have to say is reflected in that note, but I want
3 to give it a little different structure in my oral submissions if I may. Because, as My Lord, I
4 believe, that the time given for an oral submission has to be utilized as an oral submission.
5 After all, what I have put down in writing, Your Lordship can look at any time.

6 **CJI SURYA KANT:** We will go through them.

7 **JAIDEEP GUPTA:** So therefore, My Lord, without deviating from that, I'm putting it a little
8 different structure. First of all, I want to point out that we are interested in the phrase 'industry'
9 for the purpose of the Industrial Disputes Act. But as Your Lordships know, the way you define
10 it will also have repercussions in many other legislations which relate to industry. So for
11 instance the Shops and Establishments Act, etc. etc. What **Bangalore Water Supply** does,
12 in paragraphs 140 to 144, it lays down the general principle to be followed. In the rest of the
13 judgement it deals with various specific aspects. And I am concerned only with that aspect
14 which is on charitable organizations. Charitable organizations are dealt with in paragraphs
15 102 to 111. And my respectful submission will be that the approach taken by the **Bangalore**
16 **Water Supply** majority judgement is not an appropriate approach for the purpose My Lord,
17 of all activities.

18 Why I say 'all activities'? My Lord, the paradigm which is created by Justice Krishna Iyer is
19 anything which is structured by a combination of Employer and Employee and which
20 therefore, produces something which satisfies human needs etc., etc., is *prima facie* Industry.
21 It is this broad principle on which he proceeds. And then he limits it in certain very, very
22 specific situations, in very small situations, by saying that these will be outside. For instance,
23 it says, the judgement says, that when you come to professions, suppose we take a lawyer. Now
24 a lawyer may have a cleaner working... I'm giving an example not in the judgement, but in the
25 judgement this idea is there. Suppose there is a cleaner working for him, the contribution of
26 the cleaner to what is actually being produced or done by the lawyer is minimal, so you may
27 not call that an industry. He is not a workman in that sense. This is the kind of small aspects
28 on which the broad definition is cut down. And what is the broad definition? Structure, which
29 My Lords called nature. It calls it 'the nature of the activity'. Now when it says nature of the
30 activity, what Justice Krishna Iyer means is anything where there is employer-employee
31 relationship creating products with only some limitations. I respectfully submit, My Lord, that
32 this paradigm has to shift. This paradigm has to shift because... and this is a question which
33 fell from Your Lordship. Nobody has looked into the statute. The industry here is defined for
34 the purpose of the Industrial Disputes Act. The Industrial Disputes Act, though it starts by
35 saying industrial disputes, goes into several chapters. And if you look at those chapter

1 headings, it becomes clear that not every activity that is carried on for production using
2 employers and employees will be the subject matter of this legislation.

3 Just see My Lords, chapter heads. And I'm saying this everywhere, kindly keep the idea of a
4 temple in the background. How incongruous the rest of the provisions of this Act becomes if
5 we think in terms of a temple? So, if you just look at the index or the arrangement of sections,
6 the first one is disputes. But then, what we have is strikes and lockouts, layoffs and
7 retrenchment, special provisions relating to layoffs and retrenchment and closure, unfair
8 labour practices, etc. Now this is why I think Mr. Farasat said that it's a problem looking for a
9 solution. You have a problem, you have a problem, how do you provide a dispute resolution
10 mechanism for different areas of human activity? You find that one of the problems in one
11 area of human activity, a solution has been found in the Industrial Disputes Act. So you say
12 that this is a good solution. Let us apply it to all human activity. That My Lord, is an incorrect
13 paradigm in my respectful submission. That is why it is leading to this incongruous situation
14 that you have to see whether a temple can be classified as an industry. Now a temple, naturally,
15 there can be no question of all these layoffs, retrenchment strikes, lockouts, etc., doesn't
16 happen. Never has become the subject matter. So therefore, we need to shift the paradigm. We
17 mustn't start by saying all human activity, subject to a few exceptions, and move to something
18 else altogether; a paradigm shift. And I found it very helpful, a line in the dissenting judgement
19 of Justice Jaswant Singh. It is not confined in my respectful submission, only to professions
20 and charities.

21 Please just see My Lord, paragraph 185. Paragraph 185 of the **Bangalore Water Supply**.
22 I'll come back to this in a little detail, but let me indicate my broad submission straightaway.
23 And it is, in a different way, I am coming to the same conclusion that Mr. Farasat just now
24 placed. Look at para 185. Your Lordship has My Lord? "The definition of the term Industry as
25 contained in 2(j) of the Industrial Disputes Act which is in two parts being vague and too wide
26 as pointed out by Beg Chief Justice, and Krishna Iyer Justice, we have struggled to find out its
27 true scope and ambit in the light of plethora of decisions of this court which have been lying
28 down fresh tests from time to time, making our task an uphill one. However, bearing in mind
29 the collocation of the terms in which the definition is couched and applying the definition
30 doctrine of *noscitur a sociis* which as was pointed out in **Hospital Mazdoor Sabha** means,
31 that when two or more words which are susceptible to analogous meaning are coupled
32 together, they are understood to be used in their cognate sense. They take as it is their colour
33 from each other, that is, the more general is restricted to a sense analogous to the less general.
34 Expressed differently it means that the meaning of the doubtful word may be ascertained by
35 reference to the meaning of the words associated with it. We are of the view that despite the

1 width of the definition, it could not be the intention of the legislature that Categories 2 and 3
2 of the charities alluded to by our learned Brother Krishna Iyer in his judgment."

3 I'll come to that in a moment. "Hospitals run on charitable basis or as part of functions of
4 government or local bodies like municipalities and educational and research institutions,
5 whether run by private entities or by government and liberal and learned professionals like
6 that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's
7 own education, intellectual attainments and special expertise should fall within the pale of the
8 definition."

9 Then comes, what to my mind, ought to be the correct way to define 2(j). "We are inclined to
10 think that the definition is limited to those activities systematically or habitually undertaken
11 on commercial lines by private entrepreneurs with the cooperation of employees for the
12 production or distribution of goods and for the rendering of material services to the
13 community at large or a part of such community. It is needless to emphasize that in the case
14 of Liberal..." I'm not going into that.

15 I respectfully submit that this is the correct way to define 2(j). And the operative word here is
16 "on commercial lines". Your Lordship may not have to say by private entrepreneurs. The
17 Government can also have commercial activity, once the Government is having commercial
18 activity, without going into the question of sovereign or not, you can say it is industry. It ran
19 hotels for many years. Now it is withdrawing from it, it manufactured watches. It did a whole
20 plethora of economic activity which are commercial. I am moving away from this question of
21 whether there is profit or whether there is no profit. Charitable work may throw up surplus.
22 The word 'profit' is not very appropriate here, it may throw up surplus. If you utilize the surplus
23 for a charitable purpose then it is not a commercial entity. It's not a commercial purpose.

24 Now I'll give an example of how surplus is utilized again for charitable purposes. Your
25 Lordship will encounter this... some of Your Lordships will encounter this in April again. In
26 the State of Kerala, the Devaswom Board, generates its entire income primarily from three
27 temples; the Guruvayur Temple, the Sabarimala Temple and the Padmanabha Swamy Temple.
28 But it has under it thousands of temples which do not generate any income. The surplus which
29 is generated from Sabarimala etc. is utilized for the purpose of running the other temples. So
30 I prefer to use the word "surplus". So there is human endeavour, the human endeavour
31 involves employers and employees. It does create products which people consume in various
32 ways including spiritual ways. All this may generate a surplus. What you do with the surplus
33 depends on whether it's a commercial venture or not. If it is a commercial venture, primarily
34 it will be profit, it will be used for the purpose of the venture itself or for the benefit of those
35 persons who are entitled to share in the surplus. Some of it may go to charity. For instance,

1 CSR is there. Some part of it may go for charity, that is not a relevant question at all. Profit is
2 not a relevant question, utilization of the surplus is not a relevant question, the only relevant
3 question is commercial or not and that to my understanding, ought to be the definition.
4 Because the over wide definition, as Your Lordships have been looking at, is based on a
5 paradigm that almost everything that... almost every aspect of human activity is industry
6 subject to a few small exceptions. That is, we move from that paradigm to the other paradigm
7 that only those aspects of human activity involving Employer and Employee and producing
8 goods and services which are commercial in nature will have to be given primacy. This is my
9 primary argument. I only... yes, sorry, My Lord.

10 **JUSTICE B.V. NAGARATHNA:** In the case of a temple, of course it is essentially for a
11 spiritual purpose, but there are other activities with regard to the temple.

12 **JAIDEEP GUPTA:** Yes.

13 **JUSTICE B.V. NAGARATHNA:** Which can be... It's not really spiritual such as you see they
14 publish books, magazines, then...

15 **JAIDEEP GUPTA:** They create food My Lord, *prasad*.

16 **JUSTICE B.V. NAGARATHNA:** *Prasad*. So that...

17 **JAIDEEP GUPTA:** Yes. But none of this is done for commercial reasons. The only way My
18 Lord, these aspects can be taken care of is to test whether it is done for a commercial purpose
19 or not. The books which the Ramakrishna Mission publishes and sells are books which they
20 sell it, but still, My Lord, often if Your Lordship visits they will just give it to you, because their
21 purpose is not to make a profit out of those books. The purpose is to propagate their point of
22 view, their religion or their religious practices. The *prasad* which is given is primarily for a
23 spiritual purpose. We avail of the *prasad* in a temple not to assuage hunger but as partaking
24 in a spiritual exercise, so it's not a commercial venture at all.

25 **JUSTICE B.V. NAGARATHNA:** But the spiritual object is satisfied or concluded only with
26 the *prasad*.

27 **JAIDEEP GUPTA:** That is true. In many cases, My Lord, because then you participate also.

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

29 **JAIDEEP GUPTA:** You participate. If you do not partake of the *prasad* you have not really
30 participated, My Lord or you haven't participated to the fullest extent that you might in the
31 religious activity which is going on. If Your Lordship give me another five minutes, then I will
32 take Your Lordship to paragraphs 102 to 111 to show how artificial that charitable discussion
33 is. Our charitable institutions industries... this is ***Bangalore Water Supply***.

1 Page 266 of the report. Volume V of Your Lordships' digital record here. 102 page, 266. 2128
2 of the digital record.

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

4 **JAIDEEP GUPTA:** Page 57 of Volume VB. I'm told the learned attorney has been referring
5 to this judgement from this volume. May I please?

6 **CJI SURYA KANT:** Yes.

7 **JAIDEEP GUPTA:** "Can charity be industry. This paradox can be..." Sorry. Oh, I'm sorry.

8 **CJI SURYA KANT:** "The paradox can be unlocked only by..."

9 **JAIDEEP GUPTA:** "The paradox can be unlocked only by examining the nature of the
10 activity of the charity, for there are charities and charities. The grammar of labour law in a
11 pluralistic society tells us..." It's tempting to read it, but I don't need to. What the learned
12 judges then do is, they create three categories. They make it clear that these three categories
13 are not exhaustive. There may be more. And then says that the first two categories are industry,
14 the third one is not industry. Now, if I may just digress for a minute, how the full Bench has
15 gone about it is, it says that **Bangalore Water Supply** creates three categories of charity.
16 Therefore we must see which of these three categories a temple falls into. We think it falls into
17 two. Therefore, it is an industry. Now, there are multiple problems with this argument even if
18 Your Lordship retains this. Because the moment this judgement says that this is... there may
19 be more categories, then the exercise can no longer be just try to pigeonhole it in one of these
20 three, if you... whatever you do, you have to limit yourself to these three. But there are... a
21 temple really doesn't fall into any of these three categories. So, that is as far as the full bench
22 is concerned, but just see here also it's so artificial.

23 **CJI SURYA KANT:** Not only temples. There have been hundreds of numerous in '50s, '60s
24 after the post-independence...

25 **JAIDEEP GUPTA:** Yes.

26 **CJI SURYA KANT:** So many schools, hospitals, so many health camps... regularly, sites were
27 notified. Sites were identified that every week or fortnightly, monthly, health camps will be
28 organized and they were well arranged. Tents arrangement, beds arrangement. The patient
29 would stay there for one week, ten days even in the tent, and all these activities were being run.

30 **JAIDEEP GUPTA:** Correct, My Lord.

31 **CJI SURYA KANT:** One can say that by applying these under the two...

1 **JAIDEEP GUPTA:** Because there is an employer, there is an employee, there is a product,
2 there is a service. But it is not commercial.

3 **CJI SURYA KANT:** Everyone on the earth is earning or earning money only.

4 **JAIDEEP GUPTA:** Exactly. And it will generate surplus sometimes. You might generate
5 surplus also. 104 is the first of the three. Just see the first line of page 267 for a minute, My
6 Lord. "Easily three broad..."

7 **CJI SURYA KANT:** Yes.

8 **JAIDEEP GUPTA:** Now, just see the first line of the page. "Easily three broad categories may
9 emerge." Your Lordship sees that?

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

11 **JAIDEEP GUPTA:** "More may exist." That's what interests me. "More may exist." But let us
12 see what these three are. 104 is the first one. The first one is "Where the enterprise, like any
13 other, yields profits but they are siphoned off for altruistic objects." I'm not reading everything.
14 This means, My Lord, I may set up a steel plant but say that the entire profit of the steel plant
15 will go for some altruistic purpose. That's category one, according to My Lords. This is an
16 industry. And I would tend to agree, because a surplus is generated. It is a commercial venture,
17 surplus is generated. You have decided how you will use the surplus. You will use it for a
18 altruistic purpose. Industry. No problem. There is no reason why that steel plant workers
19 should be deprived. The second one is... the second species is 107. "The second species of
20 charity is really an allotropic modification of the first. If a kind-hearted businessman or high-
21 minded industrialist or service-minded operator hires employees like his non-philanthropic
22 counterparts and in cooperation with them produces and supplies goods or services to a lowly
23 and the lost, the needy and the ailing, without charging them any price or receiving a negligible
24 return, people regard him as charitable disposition." This My Lords say, is also industry.

25 Therefore if he passes on that surplus by generating less surplus. If I priced it correctly I would
26 get surplus. If I priced it, or I'm giving it free or priced it very little, then I will not get surplus,
27 then also it is industry. Then My Lord, see the last line, last two sentences of paragraph 107.
28 "From these strands of thought flow the conclusion that a second group may legitimately and
29 legally be described as industry. The fallacy in the contrary contention lies in shifting the focus
30 from the worker and the industrial activity to the disposal of the end product. This law has
31 nothing to do with that." Actually this is because right at the beginning, My Lords have said
32 that this is a worker focused law. So therefore, the entire focus has shifted to what is done for
33 the worker in this particular activity. Then My Lord, now see 108. "Some of the appellants may
34 fall into the second category just described. While we are not investigating into the merits of

1 these appeals, we may as well indicate in a general way that Gandhi Ashram which employs
2 workers like spinners and. weavers etc. and supplies cloth or other handicrafts at concessional
3 rates to needy rural consumers may not qualify for exemption." That means it's an industry.
4 "Even so, particular incidents may have to be closely probed before pronouncing on precision.
5 If cotton or yarn is given free to workers, if *charkhas* are made available free for families, if
6 fair price is paid for the net product and substantial charity thus benefits the spinners, weavers
7 and other handicraftsmen." So if the purpose of this industry is to benefit the worker, then it
8 is not, then it may not be an industry. But if it is to benefit the public, it becomes an industry.
9 That's why My Lord, in *Jai Bir*, Your Lordship's Constitution Bench was of the view that we
10 can't just keep looking at the workman. Then My Lord comes...

11 **JUSTICE DIPANKAR DATTA:** Mr. Gupta?

12 **JAIDEEP GUPTA:** Yes.

13 **JUSTICE DIPANKAR DATTA:** 107, why don't you start with "but then so far as the
14 workmen are concerned..."? Are workmen really concerned whether it's for a profit motive?
15 Workman is putting his hard labour.

16 **JAIDEEP GUPTA:** No doubt.

17 **JUSTICE DIPANKAR DATTA:** That is the philosophy, that's what has been said in
18 paragraph 107.

19 **JAIDEEP GUPTA:** One can well, My Lord, sympathize...

20 **JUSTICE DIPANKAR DATTA:** Therefore, when 108 observed an exception, the court is
21 conscious, whether you are doing it for the benefit of the workmen excluded, not for the
22 benefit.

23 **JAIDEEP GUPTA:** I bow down, I'm going to make a submission that very aspect and Your
24 Lordship is right. Let me place that passage, "But then so far as the workmen are concerned,
25 it boots little whether..."

26 **JUSTICE DIPANKAR DATTA:** Boots little.

27 **JAIDEEP GUPTA:** Boots, My Lord is a word which I'm encountering for the first time here.
28 But My Lord as Justice Chandrachud Senior told us once, that every word that Justice Krishna
29 Iyer used was actually accurate English and he said that sometimes we used to think that this
30 is wrong English and we would go and look at a dictionary and we would find, no, that's correct
31 English. Sometimes we would find that it is Old English, 15th century, but it is correct.

1 **JUSTICE B.V. NAGARATHNA:** He also coined names like Bhoposhima, Bhopal Gas
2 Tragedy and Hiroshima, he used Bhoposhima.

3 **JUSTICE DIPANKAR DATTA:** Mr. Gupta, "boots little" is an idiom, that means "the
4 benefit is minimal or insignificant", it's often used to convey that something isn't worth the
5 effort.

6 **JAIDEEP GUPTA:** So he's right. That's precisely the point that Senior Justice Chandrachud,
7 who I have only encountered as an umpire in an arbitration. I was not practicing at that time.
8 So this is correct English, is not wrong, it's just unusual to us. Now...

9 **JUSTICE JOYMALYA BAGCHI:** Modern English, it is boots little. In Modern English it is
10 brooks but maybe in 15th century...

11 **JAIDEEP GUPTA:** Yes. In 15th Century might be boots little.

12 **JUSTICE JOYMALYA BAGCHI:** Middle English has changed it.

13 **JAIDEEP GUPTA:** Yes, correct. "Whether he makes available the products free to the poor,
14 they contribute labour in return for wages and conditions of service. For them the charitable
15 employer is exactly like a commercial minded employer, both extract hard work etc." Now that
16 is correct, so therefore where is the focus? The focus is that if your charity does charity to the
17 workmen, then you are a charity, you are not an industry, but if you are doing charity to the
18 public you are not charitable. So that's an attitude, that's a approach, we are not here to
19 criticize that approach, we are here to see whether that is an approach which ought to prevail
20 today in defining the word 'industry'. And my respectful submission is that this focus cannot
21 be the correct focus today.

22 Then My Lords, see 8, 108 I have placed. "Gandhi Ashram has become an industry." Then
23 kindly see the 110 falling into third category, para 9, 109 says third category. Para 10, 110 "The
24 heart of trade or business or analogous activity is organization with an eye to competitive
25 efficiency etc." Now I'm just going a little further down. Here there is no placitum given.
26 "Special emphasis in such cases must be placed on the central fact." See, this is where I am
27 getting the submission that all Employer-Employee relations which produce something is
28 *prima facie* industry subject to a few exceptions.

29 Now, in this paragraph, it's a long paragraph and see where supposing, please see the sentence
30 which starts, "Supposing there is an ashram, supposing there is an ashram or order with a
31 guru or other head, let us further assume that there is a band of disciples, devotees or priestly
32 subordinates in the order gathered together for prayers, ascetic practices, etc. Supposing
33 further outsiders are invited and occasionally to share in the proceedings and let us assume all
34 inmates of the ashram etc. are fed, accommodated and looked after by the institution. In such

1 a case cooking, cleaning, bed making etc. may often be done at least substantially by
2 ashramites. They may chant spiritual ecstasy etc., etc. This is the kind of charitable institution
3 which is not an industry." Of course it is not an industry, no doubt about it. But please see that
4 the entire focus is on whether you're doing... how you are dealing with the worker. My point is
5 and though My Lords say that it all depends upon the nature of the activity, when it says nature
6 it means the structure of Employer-Employee creating production. That's the only nature.

7 **CJI SURYA KANT:** Worships are right, nature of activities will determine.

8 **JAIDEEP GUPTA:** But I would like...

9 **CJI SURYA KANT:** They will principle it that way.

10 **JAIDEEP GUPTA:** I would like to take it one step forward and say that the nature also
11 includes the purpose. When you set up a temple or a Gandhi ashram.

12 **CJI SURYA KANT:** The purpose is one of the component of nature.

13 **JAIDEEP GUPTA:** Exactly. That is precisely what I want to say.

14 **JUSTICE B.V. NAGARATHNA:** If you see the first sentence of para 110, and then the
15 comment in the second sentence, is that not a restriction which they are placing on such
16 charitable organizations?

17 **JAIDEEP GUPTA:** No, My Lord, here he is talking about what is industry.

18 **JUSTICE B.V. NAGARATHNA:** Correct, 110.

19 **JAIDEEP GUPTA:** Yes.

20 **JUSTICE B.V. NAGARATHNA:** First sentence.

21 **JAIDEEP GUPTA:** First sentence is that, "the heart of trade or business or analogous activity
22 is organizational with an eye on competitive efficiency by hiring employees, systemizing
23 processes, producing goods and services needed by the community and obtaining money's
24 worth of work from employees. If such be the nature of operations and Employer-Employee
25 relations which make an enterprise an industry, the motivation of the Employer in the final
26 disposal of goods is not material." That's again that boots little, same thing as boots little.

27 **JUSTICE B.V. NAGARATHNA:** It is immaterial.

28 **JAIDEEP GUPTA:** It's immaterial. Correct, then in the second half of the paragraph he
29 comes to the actual charitable organization, which is not an industry where everybody is
30 participating in it.

31 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Motivation is the answer.

- 1 **JUSTICE B.V. NAGARATHNA:** No. But to qualify, please see, to qualify for exemption...
- 2 **JAIDEEP GUPTA:** "From the definition of industry in a case where there are Employers and
3 Employees and systematic activities and production of goods and services, we need a totally
4 different orientation organization and method which will stamp the enterprise with the
5 imprint... on the enterprise, the imprint of commerciality. Special emphasis in such cases must
6 be placed on the central fact of Employer-Employee relationship. If a philanthropic devotion
7 is the basis for the charitable foundation or establishment, the institution is headed by one
8 who wholeheartedly dedicates himself to the mission and pursues it with passion, attracts
9 other to the institution not for wages, but for sharing in the cause and it's fulfilment, then the
10 undertaking is not industry."
- 11 **JUSTICE B.V. NAGARATHNA:** They have given what is not industry even in the case of
12 charitable establishment.
- 13 **JAIDEEP GUPTA:** So, this is the third category which he says is not industry. He said to
14 start with, there are at least three categories, maybe more. This is the third category which is
15 not an industry. First two categories are industry. Now, to continue with what I just now
16 brought to Your Lordship's attention, nature will definitely include purpose. And, when you
17 ask the question charitable or not, you cannot ignore the purpose of the institution. You cannot
18 say oh, there is workmen and employer, there is production, so therefore. If the nature and
19 purpose of the institution is charitable, then also it is charitable.
- 20 **CJI SURYA KANT:** We understood.
- 21 **JAIDEEP GUPTA:** Yes.
- 22 **JUSTICE JOYMALYA BAGCHI:** Mr. Gupta, in respect of the third category, perhaps the
23 last three lines are most illuminating, with regard to the category that it should be the
24 prominent character of the institution.
- 25 **JAIDEEP GUPTA:** "Predominant character of the institution and the nature of the relations
26 resulting in the production of goods and services, stray wage earning employees do not shape
27 the soul of an institution into an industry."
- 28 **JUSTICE JOYMALYA BAGCHI:** So, the relationship is more free that is voluntary service
29 to the guru. And that is how the Sangha is...?
- 30 **JAIDEEP GUPTA:** Correct.
- 31 **JUSTICE JOYMALYA BAGCHI:** And if stray employees are there, saying like auditors or...
- 32 **JAIDEEP GUPTA:** So, there may be gardeners or cleaners...

- 1 **JUSTICE JOYMALYA BAGCHI:** Gardeners, they get a small...
- 2 **JAIDEEP GUPTA:** They might get a small stipend... that won't change it...
- 3 **JUSTICE JOYMALYA BAGCHI:** That won't change it. In contrast, to expand this
4 predominant character to a substantial character.
- 5 **JAIDEEP GUPTA:** Correct, Your Lordship is right. I am saying if it is predominantly or
6 substantially commercial...
- 7 **JUSTICE JOYMALYA BAGCHI:** If it is profitable in purpose, then it should be...
- 8 **JAIDEEP GUPTA:** Then it should be industry...
- 9 **JUSTICE JOYMALYA BAGCHI:** ...not the employer-employee relationship.
- 10 **JAIDEEP GUPTA:** Exactly, My Lord. And merely because...
- 11 **CJI SURYA KANT:** Yesterday, we start with predominant nature, we are quite sure we will
12 end up there.
- 13 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So, he applied the test explicitly to
14 charities.
- 15 **JAIDEEP GUPTA:** Yes, My Lord.
- 16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It is the actual correct test, exclusively
17 to charities, but the test is actually applicable to the larger perspective.
- 18 **JAIDEEP GUPTA:** To the larger perspective altogether, but even in charities he has a
19 restricted view. If you're not... if that person is not part of your organization...
- 20 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes, he used it only here, but the
21 larger principle is...
- 22 **JAIDEEP GUPTA:** Correct, correct.
- 23 **JUSTICE JOYMALYA BAGCHI:** Only difference perhaps will be an active commercial unit
24 having a CSR department. Then employees in the CSR department, can they argue that it
25 should be hived out of that industry?
- 26 **JAIDEEP GUPTA:** No, My Lord.
- 27 **JUSTICE JOYMALYA BAGCHI:** May not.
- 28 **JAIDEEP GUPTA:** May not. Then they would say...
- 29 **JUSTICE JOYMALYA BAGCHI:** We would not need clarification on that...

1 **JAIDEEP GUPTA:** The only only part of the company we will not work in is the CSR
2 department.

3 **JUSTICE JOYMALYA BAGCHI:** Yes.

4 **JAIDEEP GUPTA:** CSR is 2%. Your Lordship may well say 2% charity will not make it into
5 a charitable institution, it will still be an industry.

6 **CJI SURYA KANT:** [UNCLEAR] is industry only.

7 **JAIDEEP GUPTA:** Substantially it has to... so what is the purpose? That purpose is
8 important. So, this is what I needed to bring to Your Lordship's attention. One aspect is that
9 there is now a judgement, there is now an order of this Honourable Court which says temples
10 are not industry, but it is not... it has a wonderful name, this judgement. The Order of Your
11 Lordships where the point has been actually decided, very recently, but, decided, it's not a very
12 significantly reasoned order. What it has said is that the Labour Court said that the temple is
13 not an industry, we leave it at that. That's all it says. But Your Lordship must know that there
14 is one order of this court which holds that temple is not an industry. And it has a beautiful
15 name, My Lord. The appellant's name is *Indravadan N. Adhvaryu (Pipala Fali*
16 *Modhvada)*.

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** This is not industrial...

18 **JAIDEEP GUPTA:** Sorry, My Lord?

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The S&P number will be easier.

20 **JAIDEEP GUPTA:** Possibly. It's Civil Appeal No(s). 7549/2011, but I found it interesting
21 because it has the names of two well-known lawyers in it, Mr. Adhvaryu and Mr. Fali. Anyway,
22 all that this does, the court says, just see My Lords, para 3, "The learned advocates have made
23 an attempt to buttress their arguments as canvassed before the learned High Court, namely
24 the learned Senior Counsel for the appellant has contended that the Respondent trust is an
25 industry as defined in 2(j) of the ID Act, as it carries on systematic activity organized by
26 cooperation between employer and employee for production and/or distribution of goods and
27 services to satisfy human wants and wishes. Which activity partake the character of industry
28 as such, the Respondent Trust cannot stave off appellants claim by placing heavy reliance on
29 *Bangalore Water Supply.*" Then it says, "Though the argument at first blush looks
30 attractive, we are not inclined to entertain the same as the reasons assigned by the Labour
31 Court is to the effect that the Respondent trust is a temple and as such it would not fall within
32 the four corners of the expression Industry." So therefore, we do not know the entire reason
33 but this is an order, definitely on the point.

1 **JUSTICE B.V. NAGARATHNA:** They didn't go into the merits of the matter.

2 **JAIDEEP GUPTA:** They did not set it out here. It said that the Labour Court's judgement
3 will hold.

4 **JUSTICE DIPANKAR DATTA:** Some compensation was provided.

5 **JAIDEEP GUPTA:** Yes, some compensation has been provided. This is to get over the
6 dispute resolution problem, My Lord. If I may just end by saying that, that is an issue. The
7 government may have to look into it. Currently there are mechanisms available: civil court,
8 writ court, tribunal, all these are available. If this is inadequate, then My Lord, for different
9 activities, there can be different provisions made. Arbitration, mediation, tribunals, even an
10 act in the nature of the Industrial Disputes Act might be there, and in fact, in some cases, the
11 states have.

12 **JUSTICE B.V. NAGARATHNA:** Institution's Bill, they wanted to bring it. Institution's Bill.

13 **JAIDEEP GUPTA:** Institution's bill also, they may have My Lord, in their own standing
14 orders, they can provide for it. Whatever, it can be provided for, but because of that reason,
15 we mustn't use the behemoth of the Industrial Disputes Act to take care of this particular
16 aspect of those activities. Deeply obliged.

17 **CJI SURYA KANT:** Thank you.

18 **JAIDEEP GUPTA:** Thank you.

19 **CJI SURYA KANT:** Mr. Bhandari.

20 **ABHIMANYU BHANDARI:** May I please? I'm not going to take much time.

21 **CJI SURYA KANT:** Don't repeat anything. Only two minutes.

22 **ABHIMANYU BHANDARI:** I won't repeat. I'm going to make a completely... rather more
23 difficult argument.

24 **CJI SURYA KANT:** Only two minutes, just straight.

25 **ABHIMANYU BHANDARI:** My Lords, the argument I'm trying to make is that in order to
26 apply *Safdarjung's* case, which everyone of us have argued is the correct law, we have to
27 increase the definition and expand the definition of sovereign functions. And on that, there
28 are two or three judgements in 1997 and 1998 including *Theyyam*, which says sovereign
29 functions has to include welfare activities. So welfare activities has to be read as a part of
30 sovereign functions to come there. Second, My Lords.

31 **CJI SURYA KANT:** That has been argued, yes.

1 **ABHIMANYU BHANDARI:** And second My Lords, point on the profit taking.
2 **Safdarjung** says that you do not necessarily have to look at whether the motive was to make
3 profit or not as long as it was in the commercial sense. And this was frowned upon exactly at
4 para 136 of **Bangalore Water** where **Bangalore Water** said this is contradictory, you
5 cannot have an industry where you want to run on commercial sense but you want to make
6 profit. 136 attacks **Safdarjung** on this ground. But according to me, there can be industries,
7 which can be done as a welfare measure, where there can be commercial sense and trade
8 without the primarily object being profit taking. So the line of **Safdarjung** is the right line
9 and sovereign functions imbibe welfare as **Theyyam's** order has. This **Theyyam Joseph**,
10 Para 6 has said, can I show **Theyyam Joseph**? Because that expands sovereign.

11 **CJI SURYA KANT:** You can give your note.

12 **ABHIMANYU BHANDARI:** But profit taking cannot be seen as a very aggressive definition
13 to say that it's completely irrelevant. If there is a slight, it may not be the primary purpose even
14 if it is the secondary purpose, one can still apply **Safdarjung** with its full vigour.

15 **CJI SURYA KANT:** Thank you.

16 **ABHIMANYU BHANDARI:** Thank you.

17 **CJI SURYA KANT:** Yes, Mr. Sridhar?

18 **SRIDHAR POTARAJU:** May I please?

19 **CJI SURYA KANT:** Five minutes only.

20 **SRIDHAR POTARAJU:** If you can please note, the only point I'm trying to make is, when
21 the legislature has chosen to define an expression using means, it is restrictive is what this
22 Honourable Court has consistently held. Now Your Lordships would kindly see the Industrial
23 Dispute Act, the entire definition clauses, J, K, S everything is used with an expression
24 "means". So therefore, it is a restrictive meaning with respect and the restrictive meaning
25 would not permit any interpretation to expand the scope of the coverage of the statute beyond
26 what it has been contemplated under the statute. That's my... I have cited two five judges
27 judgements on this issue.

28 **CJI SURYA KANT:** Your note is also already there.

29 **SRIDHAR POTARAJU:** Yes, and Justice G.P. Singh's relevant extract. Thank you very
30 much.

31 **CJI SURYA KANT:** Thank you. Yes, Mr. Sikri. Two minutes.

1 **SAKET SIKRI:** I appear for research organizations. Now para 113 of the *Bangalore Water*
2 *Supply* case deals with research organizations with respect, limited to research leading to
3 industrial growth and generation of wealth. It does not deal with or concern with respect to
4 the kind of research organizations that have been set up by the government which are under
5 sovereign function like ICMR which were referred to by the...

6 **CJI SURYA KANT:** Like Public Sector Undertaking.

7 **SAKET SIKRI:** And so all the research have been done is for public health and public health
8 and general welfare in discharge of its constitutional obligation and DPSP. So these
9 organizations have not been considered. 113 only refers to very limiting research for industrial
10 growth and generation of wealth. That was therefore the original... and the research
11 organization that I am appearing for there is no production, no distribution of services. So
12 even the third wing of the triple test with respect does not get satisfied, so whatever is earned
13 is also...

14 **CJI SURYA KANT:** It means your argument is triple test doesn't apply to research institutes.

15 **SAKET SIKRI:** I'm so very grateful, that's the argument and these research organizations
16 are not necessarily for growth of industrial wealth or generation of wealth. So therefore they
17 may not be a part of it.

18 **CJI SURYA KANT:** All right. Thank you. Yes, Mr. Sangwan?

19 **ALOK SANGWAN:** As far as KRI is concerned, we are having few SLPs pertaining to forest
20 and irrigation.

21 **CJI SURYA KANT:** Two to three minutes.

22 **ALOK SANGWAN:** I'll not take even more than a minute. So, my submission is we have
23 already given our Written Submissions. In my humble submission as pointed out at the bar
24 earlier and it came from the bench also...

25 **CJI SURYA KANT:** Mainly you're forest department?

26 **ALOK SANGWAN:** Yes, forest and irrigation, both these activities are not covered strictly
27 by the definition of industry that's my respectful submission. Apart from that, both these
28 departments they are doing statutory duties which may not be strictly within the parameters
29 of a commercial enterprise, commercial activity. So I'm adopting the submissions done by the
30 Learned Attorney General of India as well as other colleagues on this side.

31 **CJI SURYA KANT:** Otherwise also now after the arguments are over from your side...

32 **ALOK SANGWAN:** We would like to give a two page...

1 **CJI SURYA KANT:** I think that based upon these arguments you need to give a
2 supplementary note.

3 **ALOK SANGWAN:** Obligated. We will do that that also.

4 **CJI SURYA KANT:** You can give that also. We'll grant you at least one week, ten days' time.
5 Only one...

6 **ALOK SANGWAN:** My Lords may limit it on some pages so that we are not giving the entire
7 thing again, so our two pages bullet points maybe given by us. Obligated.

8 **CJI SURYA KANT:** Thank you. Mr. Varma?

9 **ANAND VARMA:** Your Lordship pleases. I beg to appear for the All India Institute of
10 Medical Sciences.

11 **CJI SURYA KANT:** Need not to argue. Who is holding AIIMS as industry?

12 **ANAND VARMA:** This Honourable Court has held AIIMS to be an industry following
13 ***Bangalore Water Supply***. AIIMS to be an industry in ***AIIMS vs Raj Singh*** which was a
14 2017 judgement.

15 **CJI SURYA KANT:** Anyway we are on lighter side, hospitals are declared...

16 **ANAND VARMA:** May I just submit?

17 **CJI SURYA KANT:** That has been argued at length.

18 **ANAND VARMA:** I'll just supplement Your Lordship, I'll not take more than 2 to 3 minutes.
19 Mr. Farasat and Mr. Gupta rightly said, Your Lordship, that the commercial sense test which
20 has been laid down in ***Safdarjung*** ought to be applied by Your Lordship in completing the
21 triple test, the triple test is correct but incomplete. May I just point out Your Lordship, if Your
22 Lordships may kindly note ***Nagpur Corporation*** had laid down a five principle test, (ii) and
23 (iv) of that test had said, "that the purpose must be to serve others, not oneself, and it must be
24 done as a commercial transaction." I understand and recognize the fact that despite this test,
25 ***Nagpur Corporation*** then held various departments of the corporation to be an industry,
26 but that test Your Lordship and this was noted also thereafter in ***Ahmedabad Textile*** where
27 an research institution and Your Lordship may I just clarify aims the primary purpose under
28 Section 13 and 14 of the AIIMS Act 1956, is research education and as an incidence patient
29 care, so the common understanding of AIIMS as a hospital arises as an incidental function of
30 research and educational functions. ***Ahmedabad Textiles*** deprecates the broad application
31 in ***Nagpur Corporation*** holds the research institute therein to be an industry, because it
32 says that the research institute was contributing to reduction of cost optimization and

1 enriching efficiency, that's **Ahmedabad Textiles. Madras Gymkhana** also follows it and
2 in fact phrase which is used in all of these judgments from **D.N. Banerjee** onwards till
3 **Bangalore Water Supply** is that the word 'undertaking' has to be interpreted in a manner
4 analogous to business and trade. Your Lordship that word analogous to business and trade the
5 limitation and the correct limitation is in a commercial sense as an economic activity is my
6 respectful submission. Now Your Lordship, therefore the culmination of all of these principles
7 in **Safdarjung** and **Safdarjung**, Your Lordship may kindly note, I'll just give the paragraph
8 number, paragraph 18, says that "a commercial character is something which is brought into
9 existence quite apart from the benefit to particular individuals", that's one.

10 **CJI SURYA KANT:** Yes, yes, you've mentioned in your note also.

11 **ANAND VARMA:** I am so grateful. Then para 23 of **Safdarjung** Your Lordship. May I just
12 emphasize Your Ladyship Justice Nagarathna had rightly noted in para 110 when Mr. Gupta
13 was reading para 110, that in exculpating charitable organisations from industry, para 110 of
14 **Bangalore Water Supply** incorporates the commercial sense test. That test is thereafter
15 discarded in para... if I may just give that paragraph number in **Bangalore Water Supply**
16 , in para 136 where the **Bangalore Water Supply** judgment disagrees with and overrules
17 the **Safdarjung** judgment, because it says we are not quite clear what the **Safdarjung** court
18 meant by commercial sense. But in my respectful submission, para 110, when it exculpates
19 charitable organisations, has in fact understood and correctly applied what commercial sense
20 was. That's number two. Thereafter Your Lordships, I've just taken in para 17 and 18 certain
21 illustrations of precedents which Your Lordships have applied in different situations to say
22 that it's not about correctness or incorrectness, there is no binary in Your Lordship's
23 interpretation. Changing situations require changing interpretations. For that purpose I've
24 mentioned **Balco** and **Zee Telefilms** as well as **Satyavati Sharma** in the tenancy context.
25 There's one judgment, **Physical Research Laboratory**, as Mr. Gupta mentioned a temple
26 judgment...

27 **CJI SURYA KANT:** So these are mentioned in your note.

28 **ANAND VARMA:** Page 20 which has held a research institute, although this is impliedly
29 overruled thereafter, to be not an industry even by applying the triple test. This is para 20 of
30 my note. Just two aspects more. I've set out what the AIIMS Act is. And this is similar to other
31 institutes across the country; JIPMER, PGI Chandigarh. On account of strike actions etc., by
32 certain resident doctors at a point of time in the past, the matter went before the Honourable
33 Delhi High Court. In proceedings before the Delhi High Court because ultimately in a institute
34 such as AIIMS there cannot be a strike to the detriment of patient care, the Honourable Delhi
35 High Court took on record an affidavit by AIIMS saying that there will be a permanent

1 negotiating mechanism wherein those who have grievances can negotiate with the employer,
2 can have a bargaining tool with the employer and therefore resort to collective action under
3 the... under these acts may not be resorted to at the detriment of patient care and research.
4 And that has been constituted. That has been in continuation at AIIMS. I wanted to bring that
5 to Your Lordship's kind attention. I'm very grateful.

6 **CJI SURYA KANT:** Alright, thank you. Yes, Dr. Vivek Sharma. For two minutes, not more
7 than that.

8 **DR. VIVEK SHARMA:** Your Lordship, before going to the submission I will clear only three
9 concepts. First the sovereignty. In Indian Constitution, there is no concept of the 'British
10 Crown' or 'The Sovereign'. In India, the sovereignty rests in the people of India because the
11 preamble starts, "We the people of India..." In India, nobody is the employee of 'The
12 Sovereign', they are the employees... they are the servants of the people of India. Now, when
13 we are talking about the sovereign function, the definition of industry, the subject matter is
14 the definition of industry. That is not hampering, not doing any problem in the performance
15 of the sovereign function, so-called sovereign function. I am using the word the 'so-called'
16 sovereign function. Because, the subject matter, the definition of industry only provides some
17 social security benefits like minimum wages etc., to the workmen who are also the employees
18 and also the Indian citizen. So, that's why, if I can give the example of the four so-called
19 sovereign functions in one minute, Your Lordships. Like the persons working in our... in our
20 armed forces and they are doing their job. They are doing the performance of so-called
21 sovereign function. But this definition of the industry only provides them the economic
22 benefit, the Social Security benefit because they are also the human beings. It is not the
23 question, just you can say that if a person is working in the so-called sovereign function, then
24 he has not the economic rights, he has not the right of his basic necessities like the Social
25 Security.

26 **CJI SURYA KANT:** Okay. Thank you very much.

27 **DR. VIVEK SHARMA:** Your Lordship, one thing more. In the *Bangalore Water Supply*,
28 everyone is saying it is the wider definition. But when a law, regulation or a system prescribes
29 a test, then it already restricts itself. In overall opinion it is wider. But when we see narrowly
30 it is the restrictive definition in itself when we apply it to the sovereign function, or the any
31 other function, then they will get the relief of... like the Social Security benefit if they are
32 qualified the triple test which is provided by the *Bangalore Water Supply*.

33 **CJI SURYA KANT:** All right, thank you.

34 **DR. VIVEK SHARMA:** So Your Lordship one thing....

1 **CJI SURYA KANT:** This is already there.

2 **DR. VIVEK SHARMA:** This judgement satisfy both the sides, who want the narrower, who
3 want the wider. Because it already provides the triple test and Your Lordship one thing more,
4 in my written submission there is a line in which there is a typing mistake. "Manufacturing
5 sector may not be..." it should be read as it is, so that's why. Grateful, Your Lordships.

6 **CJI SURYA KANT:** Thank you. Yes, Mr. Anirudh Sanganeria.

7 **ANIRUDH SANGANERIA:** I am appearing for the Gaushala. I adopt the arguments of Mr.
8 Gupta, but I just only want to add one thing.

9 **CJI SURYA KANT:** You are from Gaushala. So you are adopting same argument as Mr.
10 Gupta?

11 **ANIRUDH SANGANERIA:** Just one thing I want to add. In para 111 of the judgement, the
12 courts deals with Bombay *Pinjrapole* which is similar to a Gaushala. In that matter, what
13 had happened was the nature of the *Pinjrapole* had changed into a commercial aspect,
14 therefore My Lords had held it to be a valid judgement. And here in this case only, I believe
15 only the commercial purpose has to be seen in the Gaushala incident, or else it can come under
16 the third exception or the second exception, if it is modified by this honourable court.

17 **CJI SURYA KANT:** All right, thank you.

18 **PARMANAND PANDEY:** My Lord, I'm Parmanand Pandey, for the Indian Federation of
19 Working Journalists. I will not take more than one minute.

20 **CJI SURYA KANT:** One minute only please.

21 **PARMANAND PANDEY:** One minute only. I have to say only one thing, My Lord, that there
22 is hardly any difference between a *laddoo* maker at Tirumala Tirupati Devasthanams and who
23 is the person working in this confectionery store. So the definition, in fact, if I am a working
24 as a gardener in a temple, it does not mean that I should be excluded because that is a
25 charitable organization and or religious organization. The fact is that I am a workman there; I
26 am a workman there also. So I should not be discriminated against. This is what I have to say,
27 nothing more. And with the words I say that we fully support in the media organization, we
28 fully support the theory profounded in the *Bangalore Water Supply*.

29 **AMIT SINGH:** I appear for the petitioner.

30 **CJI SURYA KANT:** Take the mic and one minute.

31 **AMIT SINGH:** My Lord, I appear for the petitioner although my name is reflecting in the
32 respondent list which is circulated.

1 **CJI SURYA KANT:** Now this side also some, two of them have argued from this side.

2 **AMIT SINGH:** No, My Lord I'm for the petitioner, this is Zilla Pariviksha Va Anurakshan
3 Sanghatana. This is a remand home. It takes care of the destitute woman, it is an orphanage
4 also. Too many activities are being carried out by this. It is a charitable trust. Both the Labour
5 Court and Industrial Court and the Honourable Bombay High Court, My Lord, in this case
6 takes a view that it's an industry on the premise that because whatever material, My Lord may
7 appreciate, these women, destitute women when they are kept in these homes, My Lord, they
8 carry out some activities, they manufacture something and which is sold at different places.
9 Only on the ground that some profit is being generated from that activity, we are included in
10 industry. In my respectful submission that cannot be the case because this is primarily for the
11 betterment of children.

12 **CJI SURYA KANT:** These are all factual issues. Supposing the name of a orphanage or if you
13 are actually running an industry then you are an industry.

14 **AMIT SINGH:** We are put under... in *Bangalore Water Supply* para 102 my Lord, we
15 are classified in the second category where...

16 **CJI SURYA KANT:** *Bangalore Water Supply* if you fall 110 probably you can seek
17 exemption. If you don't fall...

18 **AMIT SINGH:** My Lord we are put in a Category 2 where some manufacturing is taking place
19 and therefore My Lord, we are told to be industry. In my respectful submission, because the
20 sovereign function is being carried out, it's not only in respect of the statutory laws, also the
21 international laws wherein we are taking care of the children, we are taking care of the
22 destitute women. Therefore it's only a charitable institute, only it's being funded by the
23 government. It runs only on the donation and therefore in my respectful submission that can...

24 **CJI SURYA KANT:** There was some grant in it?

25 **AMIT SINGH:** My Lord, the government is giving us some money, and whatever money is
26 being generated from these, sale of these candle making, these sweaters, whatever being
27 manufactured by these women or also small children, that is being sold at some carnival or
28 some event.

29 **CJI SURYA KANT:** If there are only destitute women or the orphan children are working,
30 then who is there who is claiming themselves to be workmen?

31 **AMIT SINGH:** There are other for example, in this particular case, there is a clerk who was
32 working in that orphanage. She is claiming a right of permanency. My Lord, that is the sum
33 and substance of this individual case and there are other employees as well, My Lord, which

1 time and again, if that employment of... Yes, My Lord, the Labour Court, she was terminated
2 My Lord, she was appointed under a Project which is organized by Sir Dorabji Trust.

3 **JUSTICE B.V. NAGARATHNA:** According to that she had to go to civil court?

4 **AMIT SINGH:** Yes, My Lord, that is my respectful submission, because this is not... I will file
5 my Written Submission, My Lord, I have prepared...

6 **CJI SURYA KANT:** How many on average basis last... this dispute arose when?

7 **AMIT SINGH:** This dispute dates back to 1990s, My Lord.

8 **CJI SURYA KANT:** 1990?

9 **AMIT SINGH:** Yes My Lord, it travelled throughout from Labour Court.

10 **CJI SURYA KANT:** In your writ petition, in your SLP have you disclosed that how many
11 orphans and how many destitute women have been staying there in your...?

12 **AMIT SINGH:** My Lord, I... in the petition it's not mentioned but we have given the
13 Constitution which shows what is the exact purpose for which this organization.

14 **CJI SURYA KANT:** No, constitution, people have very beautifully written Constitution, but
15 then actual activities are different.

16 **AMIT SINGH:** Before the Honourable Labour Court, My Lord, we have...

17 **CJI SURYA KANT:** Again, we are not on the question. We are only wanting to know that
18 how many children and women were there on average basis, say last 10 years or so and how
19 many employees are there?

20 **AMIT SINGH:** I will put that in my Written Submission.

21 **CJI SURYA KANT:** How many assisting staff are there?

22 **AMIT SINGH:** Yes, I will put that in my... because my Lord, there is...

23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes, yes, what is the name of this
24 organization?

25 **AMIT SINGH:** It's Zila Pariviksha Anurakshan Sanghatana, it's based in Kolhapur.

26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Did the employee go directly to the
27 Labour court or was there a conciliating officer who was referred to, to settle the dispute?

28 **AMIT SINGH:** My Lord, it was...

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Conciliate comments we don't need
2 details.

3 **AMIT SINGH:** My Lord, the Respondent she was appointed as a clerk My Lord, after the
4 Project got over her services were put to an end. She challenged that she approached Labour
5 Court.

6 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's all.

7 **AMIT SINGH:** Yes, she approached Labour Court. I will put that in my Written Submission
8 My Lord, giving the details of the number of...

9 **CJI SURYA KANT:** Alright, alright, thank you. Yes who will start on this side.

10 **INDIRA JAISINGH:** May I please, I'll be starting on behalf of the Respondent.

11 **CJI SURYA KANT:** Yes.

12 **INDIRA JAISINGH:** Arguing in support of the judgement in *Bangalore Water Supply*
13 and trying to persuade you that it does not require reconsideration and that this reference
14 should be rejected. My Lord, it's not a very opportune time to begin because all of you must be
15 very busy, very hungry, but nevertheless, nevertheless I'll make a bold attempt to at least tell
16 you what will be the trajectory of my argument and then substantiate it later with reference to
17 documentation case law etc., etc. Now, insofar as the reference is concerned, I will attempt to
18 persuade you that the reference is based on incorrect information of whether or not there is a
19 conflict between judgements of the court. Well, it went first to a Bench of Three-judges before
20 it went to a Bench of Five-judges, and the Three-judges took the view that there is a conflict
21 between *Conservator of forests* and *Parmar* on the issue of sovereign functions. Now, on
22 the assumption that there is a conflict, they refer the papers to the Chief Justice who then
23 placed it before a bench of five judges. My first submission is going to be there is no conflict
24 between the judgement of *Conservator* and *Parmar*. *Parmar* in fact, My Lord, this is
25 confined to the facts of the case, *Parmar* says no contention has been raised that this is an
26 industry, therefore the Labour Court erred in deciding that this is an industry.

27 **CJI SURYA KANT:** That I think State will go to the issues involved on the... we are not going
28 to hold that the reference was defective or that [UNCLEAR].

29 **INDIRA JAISINGH:** I am going to argue...

30 **CJI SURYA KANT:** Because then we will go deeper into it that how could even six bench
31 could be doubted at that time.

1 **INDIRA JAISINGH:** I understand, I fully understand, that is why I want to make it, let me
2 make it very clear. I will be arguing in the alternative on the assumption that the reference is
3 properly made, but do not foreclose me from pointing out that there are errors in the making
4 of the reference. The first error I have already pointed out, the second error...

5 **CJI SURYA KANT:** That are now old issues and...

6 **INDIRA JAISINGH:** Just allow me to finish. I'll straight away I'll come to that. I'll put it in
7 writing also, so there will be no difficulty. The second reason why I say the reference should
8 be returned without an opinion is again because the judgement of seven judges is... is
9 considered a judgment of seven judges notwithstanding two dissents. Therefore, and there is
10 case law to substantiate my submission, you cannot call it a judgment of five judges. Therefore,
11 all this conversation are well-known principles of law but I'm amazed at arguments at the bar
12 that *Safdarjung* is of six and **Bangalore** is of five, *Bangalore* is not of five. Let us be very
13 clear on our first principles, My Lord. If we are dealing with the judgement of seven judges
14 *Safdarjung* is a judgement of six judges. In fact, I was very curious how a bench of Six-
15 Judges could be set up, assuming there was a difference of opinion equally divided. You might
16 have had to have another judgement. A preferred but nevertheless not maybe those were the
17 days when there were not enough judges in the Supreme Court and the Chief Justice found it
18 convenient to appoint a judge... bench of six judges. I can't think of any other reason why there
19 would be a bench of six. Ordinarily, this court takes a precaution for anticipating a difference
20 of opinion where the majority takes a view...

21 **CJI SURYA KANT:** These are instances of the past. In fact now from last...

22 **INDIRA JAISINGH:** There are two reasons, I have given you two reasons, and this was
23 pointed out, of course, the reference order also says it's not unanimous there is no... because
24 there was so much argument at the bar it is my duty to lay it before you, and I'll go promptly
25 to my...

26 **CJI SURYA KANT:** No, we are pointing out something else Madam Indira. If you'll go to the
27 '60s and maybe '50s also. I am not sure '50s or it's 60s, there used to be one Four-Judge
28 bench... Four-Judge bench, Six-Judge bench...

29 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** A.K. Gopalan was four.

30 **CHANDER UDAY SINGH:** [UNCLEAR] in one judgment, I don't have it at hand, explained
31 that Four-Judges was not a... it was only an administrative convenience because a particular
32 judge was available, and it was not... in fact, Your Lordship said that a difference between a
33 Three-Judge and Four-Judge bench doesn't prevail because it's not a... considered it as a
34 constitutional...

- 1 **CJI SURYA KANT:** I'll try to find out that is there any... but I couldn't... I...
- 2 **INDIRA JAISINGH:** It is just my curiosity, it is just my curiosity as to why there were only
3 six? I tend to believe the number of judges were not as many as you have now.
- 4 **CJI SURYA KANT:** This might be the reason.
- 5 **INDIRA JAISINGH:** It could be the reason, I don't know. But I am dealing with it only in
6 the context of six.
- 7 **JUSTICE DIPANKAR DATTA:** [UNCLEAR] Seven judge bench in Bangalore?
- 8 **INDIRA JAISINGH:** It's a seven-judge. It's a decision of seven judges.
- 9 **JUSTICE DIPANKAR DATTA:** Now, how did it reach a larger bench of seven?
- 10 **INDIRA JAISINGH:** The five judges. Dharmadhikari, Justice Dharmadhikari...
- 11 **JUSTICE DIPANKAR DATTA:** No, no, we are not on *Jai Bir*, we are not on *Jai Bir*. Go
12 back to the days of 1978, *Safdarjung* was holding the field, six judges. How did it reach the
13 Seven-Judge bench of Justice Beg, Chief Justice, Justice Chandrachud, Justice Bhagwati,
14 Justice Krishna Iyer, Justice Singh, Justice Tulzapurkar and Justice Desai. How did it reach
15 this seven judge bench?
- 16 **INDIRA JAISINGH:** It came by way of an appeal. Reference order, my learned friend points
17 out that there is a reference order. It is reported in 1978, Volume II.
- 18 **JUSTICE DIPANKAR DATTA:** Is it part of the...?
- 19 **CJI SURYA KANT:** Where is the reference order?
- 20 **GOPAL SANKARANARAYAN:** 213. It is there in the 5 to 7 judge reference in Your
21 Lordship's this matter, there's a reference to the paragraph from that.
- 22 **JUSTICE DIPANKAR DATTA:** Where do we find it?
- 23 **JUSTICE B.V. NAGARATHNA:** What is the citation please?
- 24 **GOPAL SANKARANARAYAN:** It's 111 of Volume VB. It's para 18.
- 25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Para 1 doesn't really say anything.
- 26 **CJI SURYA KANT:** Some people are still working. I'm trying to find out, I have not been
27 able to. That's why indeed that if somebody will question the reference. Paragraph?
- 28 **GOPAL SANKARANARAYANAN:** It's at page 111, top of page 111.
- 29 **CJI SURYA KANT:** No, Justice Beg... no.

1 **CHANDER UDAY SINGH:** No, para 9, *Bangalore Water Supply* sets out the reference.
2 Para 1 says this has come to us on reference.

3 **CJI SURYA KANT:** Para?

4 **CHANDER UDAY SINGH:** Para 9 of *Bangalore Water Supply*.

5 **CJI SURYA KANT:** Para 9?

6 **INDIRA JAISINGH:** Reference, yes.

7 **CHANDER UDAY SINGH:** Para 1, the last line says this has come to us on reference. Para
8 9 sets out the reference.

9 **INDIRA JAISINGH:** Note again there is a lament that Parliament is not amending the law.
10 Yes, yes, it's here. "The reference range thus, one should have thought that an activist
11 Parliament by taking quick policy decisions and by resorting to amendatory processes would
12 have a simplified, clarified and delimited and definition of industry and if we may add,
13 workmen. Had this been done by speed by the legislation, litigation which is besetting sin of
14 industrial life would well have been avoided by a considerable degree. The consummation may
15 perhaps happen on a distant date." Now I don't know whether this will be taken to the next
16 century. "But this court has to decide from a day to day disputes involving this branch of
17 industrial law and give guidance by deciding what is an industry through the process of
18 interpretation and reinterpretation with the murky accumulation of case law. Counsel on it
19 was *Safdarjung*. The controversy was around *Safdarjung*. Counsel on both sides have
20 chosen to rely on *Safdarjung*, each emphasizing one part or the other of the decision as
21 supporting this argument, rulings of this court before and after have revealed no unanimity
22 nor stuck with unison, and so we confess to an inability to discern any golden thread running
23 through the string of decisions bearing on the issue at hand. The chance of confusion from the
24 crop of cases in an area where the common man has to understand and apply the law, make it
25 desirable that there should be a comprehensive, clear and conclusive declaration as to what is
26 an industry under the Industrial Disputes Act as it now stands. Therefore, we think it necessary
27 to place this case before the learned Chief Justice for consideration of a larger bench. In the
28 meantime, Parliament does not act, this court may have to illumine the twilight area of law
29 and help."

30 Now Your Lordship has seen after this there's the 1982 Amendment which is not brought into
31 force. After that there is a 2020 code which again for five years is not brought into force and is
32 brought into force only with effect from November 2025. Therefore the concept of pipeline
33 cases, because all new cases will now be decided under the code. And this is my third reason
34 to urge you, two reasons I've already given you, why Your Lordship should not answer this

1 reference by giving an opinion. But the third and in my opinion, a very relevant reason, is that
2 we now have a legislation. And this legislation if you just turn to the definition of Industry
3 under the new code...

4 **CJI SURYA KANT:** The problem will be both sides, Madam Indira.

5 **INDIRA JAISINGH:** Yes.

6 **CJI SURYA KANT:** Your argument is to pre-emptory in nature to say that we should not
7 comment on 2025, 2020 Act because probably now you say you are planning to challenge.

8 **INDIRA JAISINGH:** Yes, My Lord.

9 **CJI SURYA KANT:** Now what will happen?

10 **INDIRA JAISINGH:** Both sides will be aggrieved.

11 **CJI SURYA KANT:** If suppose we close the matter by saying that all these are only limited
12 pipeline matters are left and therefore nothing is required to be done. Tomorrow this
13 ***Bangalore Water Supply*** will be followed in interpreting that very provision. Therefore
14 whatever reference is there, had to be answered on merits.

15 **INDIRA JAISINGH:** No, My Lords.

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Those cases will be decided on their
17 own merits.

18 **INDIRA JAISINGH:** Judgment that you render in this reference will affect both sides one
19 way or the other. You will either have complaints coming from the workers or you'll have
20 complaints coming from the employers. Both sides are going to be... One moment My Lord,
21 before we break for lunch, just read the definition of Industry under the new law. That's all I
22 want to point out and then see what impact this reference is going to have on this definition.
23 I'll read it. "Industry means a systematic activity carried on by cooperation between an
24 employer and a worker, whether such worker is employed by such employee directly or by or
25 through an agency including a contractor for the production, supply and distribution of goods
26 or services with a view to satisfy human wants or wishes not being wants or wishes, which are
27 merely spiritual or religious in nature whether or not capital has been employed for the
28 purpose of carrying out such activity or such activity is carried on with the motive to make gain
29 or profit lifted from ***Bangalore Water Supply***." Every sentence, every word in this code is
30 lifted from ***Bangalore Water Supply***. Legislative endorsement of the ***Bangalore Water***
31 ***Supply*** judgement that you don't need a profit motive that you don't have to see whether
32 capital is employed or not employed. The problem for us comes in the exclusions. Now come
33 the exclusions. "And activities carried on but does not include institutions organized or

1 managed by organizations wholly or substantially engaged in any charitable." Now My Lord
2 very carefully deconstruct this charitable to social. I am not aware of any legal definition of the
3 word "social." I've heard of social welfare, I've heard of socio-economic rights, but what does
4 "social" mean? I found that word existing in law only in CSR, Corporate Social Responsibility.
5 And if you go to the schedule under that Act, it covers every known form of human activity,
6 everything, total. And then a philanthropic service. Then comes sovereign functions which are
7 again not defined except in inclusive manner.

8 **CJI SURYA KANT:** Our problem is that now we are not looking towards the definition of
9 the new Act at all. Because if we look into it that means we are commenting on it.

10 **INDIRA JAISINGH:** I fail to understand how this reference can be answered without
11 deciding whether charities are covered by the definition of industry under the old law? And if
12 you in a Nine-Judge Bench give a decision that they are not covered, you are upholding this
13 law.

14 **CJI SURYA KANT:** No, no, no, they're...

15 **INDIRA JAISINGH:** You're upholding the 20 code.

16 **CJI SURYA KANT:** That's why we said we will only confine to the interpretation of what the
17 definition was there in this...

18 **INDIRA JAISINGH:** By what methodology of law, because you will have to decide whether
19 the exclusion of charitable is right or wrong. With what methodology will you come to that
20 conclusion?

21 **JUSTICE JOYMALYA BAGCHI:** Madam, please consider this also that the ratio in
22 *Bangalore* was anticipating a Parliamentary action.

23 **INDIRA JAISINGH:** It was.

24 **JUSTICE JOYMALYA BAGCHI:** And because of that and paragraph in all probability 147,
25 Justice Iyer says this is a stopgap definition awaiting legislative response. Now the legislative
26 response has come after 50 odd years.

27 **INDIRA JAISINGH:** Yes.

28 **JUSTICE JOYMALYA BAGCHI:** But that does not in our understanding of interpreting
29 *Bangalore* in the light of today's perspective, give any colour to the legislative exercise as to
30 its constitutionality. Even if we hold that Justice Jaswant Singh's more wide definition of
31 charity would carve out from the definition of "industry" as the correct definition, it does not
32 have an impact as to excluding charity in the new Industrial Relations Code would be any way

1 commended, positively or otherwise. We are just seeing whether the ratio in *Bangalore* was
2 correctly decided in the perspective of the '47 Act definition.

3 **INDIRA JAISINGH:** I understand. I understand.

4 **JUSTICE JOYMALYA BAGCHI:** Not on [UNCLEAR] 2025 Act definition.

5 **INDIRA JAISINGH:** I understand. Just one small comment on that My Lord. Justice
6 Jaswant Singh's judgement...

7 **JUSTICE JOYMALYA BAGCHI:** We would be careful to add a caveat always that our
8 interpretation is in reference to the repealed law and not in reference to the 2025 code.

9 **INDIRA JAISINGH:** My Lord, I appreciate that. I appreciate that. I'm only pointing out to
10 you I will read at the appropriate time learned Jaswant Singh's judgment. He doesn't deal with
11 the question of charity; he disputes the triple test. He doesn't agree with the triple test, which
12 now finds legislative endorsement. Without any reasons I'll point out to you with no disrespect
13 meant to the judge. If anything somebody said Justice Beg's judgement was hurried if
14 anything, if you read Justice Jaswant Singh's judgement, it reads like a hurried judgment. I
15 don't wish to make any, I'm not... It's not derogatory or pejorative or not. It's a question of how
16 people write their judgments. Some people can argue Krishna Iyer wrote verbose too long
17 judgments. I once had occasion to ask him, "sir, why do you write such long judgments?" I
18 asked him that question in a personal meeting with him. His answer to me was at least that
19 way judges get to read something. That was his answer.

20 **CJI SURYA KANT:** We will come back after lunch.

21 <<<<LUNCH BREAK>>>>

22 **CJI SURYA KANT:** Yes, Madam Indira.

23 **INDIRA JAISINGH:** My Lord, I have more or less indicated the three reasons which,
24 according to me strike a note of caution in relation to answering this reference, and it was... it
25 was suggested just by way of an aside that one problem with the judgement in *Bangalore*
26 *Water Supply* was that the Justice Beg was due to retire, but it will be my submission that
27 amongst the separate judgements that are rendered, the most precise and concise articulation
28 of the definition of "Industry" is in Justice Beg's judgment, and I will be taking you to that
29 judgement.

30 **CJI SURYA KANT:** In any case, these issues are inconsequential now...

31 **INDIRA JAISINGH:** Yes, but when learned seniors get up and start attacking judges, I don't
32 know what to do.

1 **CJI SURYA KANT:** You can ignore it from our side. You can start.

2 **INDIRA JAISINGH:** Very well, very well, but I just wanted to point it out that I will be
3 drawing your attention to Justice... On the merits of the case.

4 **CJI SURYA KANT:** Yes why not.

5 **INDIRA JAISINGH:** My... it's all in writing, and I'll give it to you. This is only to indicate to
6 you how my argument is going to flow. On the merits of the case, it is going to be my
7 submission that ***Bangalore Water Supply*** has been decided according to classical
8 principles of interpretation of statutes. Now what are these classical principles? There are
9 classical principles for interpreting what are known as beneficial statutes. And the Industrial
10 Disputes Act has been characterised by several judgments of this court as a beneficial statute.
11 Now, My Lord, the classical principles are, look at the provisions of Part 4 of the Constitution,
12 read the plain meaning of the section, look at the object of the Act, read the Preamble, see how
13 the Act achieves that object, and interpret the words according to those principles. Maxwell,
14 Heydon, take it from anywhere you want to take it, these are classical principles, My Lord. And
15 my submission is, these classical principles have been used in ***Bangalore Water Supply*** to
16 come to the conclusion they have come to. Therefore, My Lord, no case is made out for ...

17 **CJI SURYA KANT:** Revisiting.

18 **INDIRA JAISINGH:** Differing with the judgement. That's the first point. Second thing is,
19 when I say it's a beneficial statute, what do I mean by that? My interpretation of that. My Lord,
20 remember, the Industrial Disputes Act of 1947 is actually a Pre-Constitution Act. That's the
21 first point. The second point is My Lord, My Lord Justice Dipankar Datta hinted at that, but I
22 will give you a judgment to support that proposition. It gave to the workmen security of tenure
23 which an Ordinary Civil Court cannot give. My Lord, an Ordinary Civil Court is bound by the
24 law of Master and Servant, classically under common law, and has no jurisdiction to grant
25 reinstatement. At best, they can give you damages.

26 **CJI SURYA KANT:** Yes.

27 **INDIRA JAISINGH:** Now this *lacuna* is cleared by the Industrial Disputes Act of 1947.
28 Because under the Industrial Disputes Act of 1947, the relief of reinstatement can be granted.
29 Now, My Lord, why... and especially when Section 11A was introduced into the act in the year
30 1971. Now, My Lord, Justice Datta hinted at that, that what exactly is the jurisdiction of a
31 Labour Court, how does it differ from the jurisdiction of a civil court? So, My Lord, there this
32 court has held that a Labour Court can *de novo* exercise its jurisdiction to decide whether the
33 dismissal is unfair, justified, and whether the punishment is proportionate or not
34 proportionate, which is something no Civil Court can do. So, when we want protection under

1 the Industrial Disputes Act, we are asking for protection for security of tenure, it departs from
2 the rule of hire-and-fire, which is the classical rule under common law. So, My Lord, this is
3 not a futile fight. This is not a fight for gratuity. Labour law has two components to it; one is
4 security of employment, which is most critical, and the second is welfare benefits, such as
5 gratuity, such as hours of work, such as maternity leave, such as Provident Fund, such as
6 employment... ESI. These are the welfare benefits that different statutes give us. But the
7 primary security of employment comes from departing from the rule of hire-and-fire and that
8 is what this fight is all about.

9 Now that being said My Lord, the next question posed is, there are certain rules and
10 regulations and constitutional provisions which govern a whole lot of employees. There are.
11 My Lord, one of the most fundamental articles in the Constitution of India is Article 311 of the
12 Constitution of India. My Lord, if we are covered by 311, we are not asking for coverage under
13 the Industrial Disputes Act; we are here talking about those who are not covered by 311 and
14 309. This is the reply to Mr. Naphade's argument that no, departments of the government
15 should not be covered. Then he must answer the question, are they covered by 311? Are they
16 covered by 310? If they are, we have no problem. My Lord, this court has upheld the
17 constitutional validity of the Administrative Tribunals Act. Every state has an Administrative
18 Tribunal of its own, where My Lord, we can go for relief from unfair dismissal. And My Lord,
19 the protection of 311 goes beyond the protection of the Industrial Disputes Act. So, we are not
20 stupid people that if we are covered by 311, we will clamour for coverage under Industrial
21 Disputes Act. So, my submission is this, that every democratic society is duty bound to give
22 access to justice in a judicial forum. And all that the Industrial Disputes Act of 1947 does, is
23 give me that access. It doesn't, My Lord, create any major substantive rights, it gives me access
24 to justice in relation to unfair dismissals, in relation to victimisation, in relation to *malafide*
25 dismissals. This is what this court has said and I will place that judgment before you, how the
26 law comes to be changed when Section 11A is introduced in the Industrial Disputes Act,
27 straightaway I will tell you, it's the decision of this court in ***Workmen of Firestone vs***
28 ***Management*** reported in (1973) 1 SCC, page 813. There was My Lord, a tangential challenge
29 to the introduction of Section 11A into the Industrial Disputes Act, which granted the relief of
30 reinstatement, and this court then explains the difference between the jurisdiction of a Labour
31 Court and the jurisdiction of a Civil Court, and says 11A gives security of employment; that I
32 understood to be, because they can record evidence *de novo*. They can depart from
33 punishment imposed by the employer. And My Lord, the doctrine of proportionality comes to
34 be introduced...

35 **CJI SURYA KANT:** Proportionality, that is the most important component, proportionality.

36 **INDIRA JAISINGH:** Yes My Lord, proportionality.

1 **CJI SURYA KANT:** Even the tribunal can... punishment of dismissal removal can be reduced
2 to a smaller, minor punishment.

3 **INDIRA JAISINGH:** Yes. You might put the guillotine on the worker, for a minor
4 misconduct.

5 **CJI SURYA KANT:** Power normally not given even to High Court under 226.

6 **INDIRA JAISINGH:** Yes, My Lord. Yes, My Lord, and under 311, My Lord, we know the law.
7 Under 311, My Lord, the law goes much further where, who can dismiss you and appointing
8 authority has to be senior to you, chargesheets have to be given, rules of natural justice have
9 to be complied with; none of this was possible under Common Law and we were all governed
10 by the rule of hire-and-fire. This is the significance of the case before you, My Lord. If we get
11 thrown out of the coverage of the Industrial Disputes Act, we go nowhere. I concede, My Lord,
12 if I'm covered by another statute which gives me access to justice, I have no complaints. Here
13 the question is of throwing us out of all possible... Now you have to look at the triple test from
14 these points of view. The triple test is normative in nature. It lays down norms as to... first of
15 all, My Lord, my submission is going to be, there is actually no ambiguity in the definition of
16 "Industry" in the Act, but assuming there is an ambiguity, nobody bothered to clarify what is
17 this ambiguity until Justice Datta pointed out that the definition is in two parts. There are two
18 different parts to the definition. My Lord, where is the ambiguity? Between employer and
19 employer? Between workmen and workmen? Between workmen and employer? Which is what
20 I'm concerned with. And My Lord, there are industrial disputes to which I have myself been a
21 Party, My Lord, Justice Srikrishna traditionally represented the Textile Association of
22 Manufacturers in the Industrial Court in Bombay. My Lord, very often we had occasion to
23 appear against each other, but disputes between employers and employees are not unknown
24 and disputes between employees and employees are not unknown. Classically they arise when
25 which union is to be recognized. Whether a person, a union which has 50% membership
26 should be recognized or 25% membership has to be recognised. There are endless disputes
27 between workers, they all get resolved in an industrial court. Now if you look at the triple test
28 from this point of view, you will find that a norm has been laid down to decide what to include
29 in industry and what not to include. Now My Lord, not much has been said about charity. Just
30 pause here and see who are the petitioners before you. My Lord, I'm rather surprised. I was
31 expecting, traditionally My Lord, over the years we have faced private employers in a court of
32 law. **Firestone** 1971 judgement is a private employer; today who's come before you? All the
33 states. Does it not surprise you? Where are the private Employers? They're not here. Is this a
34 surrogate fight for them? And regardless of who's in power in a state, all the states are arguing;
35 they want this thing, the judgement overruled. Whether it's Punjab or Karnataka, makes no
36 difference. They're all arguing the same thing. They have a common interest to protect. I don't

1 understand. If that is the case, why did the 2020 court lift the definition of "Industry" from
2 ***Bangalore Water Supply*** and codify it? And somewhere in his judgement, Justice Krishna
3 Iyer says that a definition is the distillation of jurisprudence of law. A careful definition has
4 been put there. Our problem, as I told you, is when you come to the exclusions. And even here
5 in this reference, what is the main argument over here? If only if it is a profit motive, then you
6 call it an industry; that is the argument. Of all the people, shorn of all other verbiage. This is
7 the one single thing that we are arguing before you. Only if there's a commercial; some dressed
8 it up in semantics, some said there must be a commercial motive. What is that? Some said
9 distinguished between profit and surplus. What is the distinction? Surplus comes from profit.
10 So, therefore, My Lord, this is a single attack on this judgement, that... that charity should be
11 excluded from the purview of this Act. Now My Lord, to that, the answer is very simple. The
12 answer is, charity begins at home. Justice Krishna Iyer says, yes, by all means you do charity
13 to everybody you want to do, but have you done it to your workers? How is your worker
14 concerned? If your worker comes to you and says give me a fair wage, what will you tell him?
15 That I'm a charitable institution, I'm doing charity to the world, but I will not give you a fair
16 wage. This is the issue, My Lord. The demand for fair wages. And My Lord, temples are before
17 you. They are the richest entity in this country, temples. Your Ladyship referred to the *prasad*.
18 Yes, there is *prasad*. Justice Krishna Iyer deals with that. He says the spiritual aspect may not
19 concern us but the person who's making a *laddoo* in the department, what about his wages?
20 So the Doctrine of Severability comes in over there. Justice Chandrachud points out that you
21 talk of sovereign functions, but a mint, a worker working in a mint producing a coin,
22 production of coins is a sovereign function, but what about the worker producing a coin in a
23 mint? He is covered by the Justice Chandrachud's judgement, Y.V. Chandrachud's judgment,
24 in the separate judgment. So, My Lord, one has to have clarity in one's mind as to what is the
25 purpose of this whole exercise. The purpose of this exercise is access to justice. There is no
26 other purpose behind this exercise. That is how I would like you to appreciate the judgment of
27 the Supreme Court in ***Bangalore Water Supply*** .

28 Now, My Lord, that being said, as I said, I had already... I have filed my written submissions.
29 First of all, ***Bangalore Water Supply*** sorry, ***Firestone***, I don't think was on the record of
30 the case. If you allow me, I'll just hand over the copies. I will read only the passage relating to
31 jurisdiction of the court.

32 **CJI SURYA KANT:** There are [UNCLEAR]. You want to give written synopsis?

33 **INDIRA JAISINGH:** No, no, no, just take a look at ***Firestone*** for one moment, I've handed
34 over a hard copy. I will not trouble you with the whole judgment.

35 **CJI SURYA KANT:** Because there is one already there with soft copy, but we can...

1 **INDIRA JAISINGH:** On the screen, very well, I'll point you to the relevant passage, if you
2 look at 13, para 13.

3 **CJI SURYA KANT:** For the *Firestone* judgement?

4 **INDIRA JAISINGH:** Yes. My Lord, I must tell you, as a tiny little aside, probably this
5 judgement was delivered before many of us were born, but as a small aside and a minor
6 achievement of mine, I must tell you that I was one of the people who argued this case. I don't
7 like to say it, but I'm saying it. And I'm saying it My Lord, because I was opposed by Mr. M. C.
8 Setalvad and by Mr. Damania, who is the senior of the Amicus that you have appointed in this
9 case Mr. J. P. Cama. These are only small little trivia, but they may help us to appreciate the
10 judgement better. Now, My Lord, para 13. "The above proposition has completely changed by
11 Section 11A with all... is now obligatory on a employer to hold a proper domestic inquiry in
12 which all material evidence will have to be adduced. When a dispute is referred for
13 adjudication, and it is found that the domestic inquiry conducted by the management is
14 defective, or if it is found that no domestic inquiry at all had been held." My Lord has got that?
15 Yeah... "...been held, conducted. The order of discharge and termination passed by the
16 employer becomes without anything more unjustified." Now, My Lord, please note the use of
17 the word 'unjustified'. "It goes beyond a formal appreciation of the dismissal. And the Labour
18 Tribunal has no option but to direct the reinstatement of the workmen concerned as his
19 discharge or dismiss is illegal. Even the case where a domestic inquiry has been held, and
20 finding of misconduct recorded, the Labour Tribunal has now full power and jurisdiction to
21 re-appreciate the evidence and to satisfy themselves whether the evidence justifies the finding
22 of misconduct. Even if the inquiry proceedings are held to be proper and the finding of
23 misconduct is to be accepted, the Tribunal now has the power to consider whether the
24 punishment of dismissal or discharge was necessary for the type of misconduct..."

25 **CJI SURYA KANT:** "Of which."

26 **INDIRA JAISINGH:** "Of which the workmen is found guilty. In such circumstances, the
27 Tribunal can also give any other relief to the workmen, including imposing lesser punishment.
28 In case when no employee... inquiry has been conducted, any inquiry where the inquiry
29 conducted by him is held to be defective, the employee will not be given an opportunity to
30 address... adduce evidence... Now, before the Tribunal, for justifying the action, various
31 decisions of court have been emphasized, et cetera." My Lord, this is the passage which tells
32 you what the Industrial Disputes Act really does for workmen, what is its beneficial content.
33 Because we are not just saying that there is a beneficial content; we are pointing out to you
34 what is this beneficial content.

1 And My Lord, ultimately, at para 35, they say that various arguments have been advanced but
2 they uphold that interpretation in which I have read out in para 11. Your Lordship need not
3 read any more. And just see para 50. Again the same considerations. "The Legislature in
4 Section 11A has made a departure in certain respects in the law as laid down by this court."
5 Now, My Lord, the law is laid down by this court went on classical principles of hire-and-fire.
6 "For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is
7 proved. This is particularly so, as already pointed out by us regarding even findings arrived at
8 by the employer in an inquiry properly held. The Tribunal has also been given power also for
9 the first time to interfere with the punishment imposed by the employer. When such wide
10 powers have now been conferred on Tribunals, the Legislature obviously felt that some
11 restrictions have to be imposed regarding what matters may be taken into account." That's My
12 Lord, on the criteria for deciding the principle of proportionality. So, I place reliance on this
13 judgement for supporting the proposition that this is a beneficial statute. That is the main
14 issue.

15 If this is the beneficial statute My Lord, it follows that its interpretation must be done in the
16 light of directive principles of state policy, and that is what this court has held in **Bangalore**
17 **Water Supply**. Now, My Lord, I... because, fun was made of the fact, and Mr. Naphade used
18 the word we need to now be "objective about it". What is the meaning of the word "objective
19 about it"? Either it is a beneficial statute, or it is not, one of the two. Where is the objectivity
20 there? It's a pure statement of fact. You agree, or you disagree it's a beneficial statute. If it is,
21 then a certain interpretation follows, because Directive Principles of state policy are also
22 binding on this court in the interpretation of statutes. It has been so held by this Honourable
23 court.

24 Now this being said, I will take you, My Lord, to the written submissions except that there are
25 two sets. One was formulated after listening to the arguments of my worthy opponents and
26 the other before listening to them. So, My Lord, if Your Lordship can take the second set first
27 and then I'll bring you to the first and I'll conclude with my arguments. The second written
28 submission I have filed...

29 **CJI SURYA KANT:** The official legislation is taken note.

30 **INDIRA JAISINGH:** It is, I'm not going to trouble you, except I will read passages from
31 **Bangalore Water Supply** itself. I'm not going to take you to texts and volumes and this
32 and that. No, because I'm urging that for acceptance by the court. My Lord, if Your Lordship
33 takes the second set of written submissions.

34 My Lord, I won't take up too much of your time, I'll run you through this quickly because by
35 now we are probably suffering from fatigue also. It's true My Lord, even I am suffering from

1 fatigue. What do I do? Yes, My Lord, my learned companion, senior tells me, it's called combat
2 fatigue.

3 My Lord, if I may quickly run you through this.

4 **CJI SURYA KANT:** Yes.

5 **INDIRA JAISINGH:** The first point I've said is the reference should not be heard, but kindly
6 don't get alarmed because I've made my submissions in the alternative. I'm assuming that the
7 reference is not going to be discharged, I've made submissions on both sides. So, the first point
8 and I will be addressing you a little bit on sovereign functions. Because sovereign functions is
9 also one of the issues which bothered the court. At the time of... At least the three judges who
10 made the reference to the Chief Justice, they talk only of sovereign functions, they don't talk
11 about anything else; I'll point that out. So, therefore, it's necessary to address the issue of
12 sovereign functions also because three judges were alarmed by sovereign functions.

13 Now My Lord, first I will... first I'm saying that the reference has been on erroneous
14 assumptions. So, the first is My Lord, "The present appeal along with the other connected
15 cases has been listed before the Constitution bench of five judges on the referenced to a bench
16 of three judges of this court, finding an apparent conflict between the decision of the two
17 benches of the court in **Chief Conservator vs. Parmar**. On the question whether Social
18 Forestry Department of State, which is a welfare scheme undertaken by improvements of the
19 environment would be covered by the definition of industry under Section 2(j) of the Industrial
20 Disputes Act, the aforesaid benches of this court called out differently the ratio of the seven
21 judge bench decision of the court in the case of **Bangalore Water Supply**, hereinafter
22 referred to as **Bangalore**, the bench of three judges in the case of **Chief Conservator of**
23 **Forest**, based on the decision in **Bangalore Water Supply** concluded that the Social
24 Forestry Department is covered by the definition of industry, whereas the two judge bench
25 decision of the state and **Parmar** took a different view." My Lord, this is incorrect. I'll point
26 out from the judgments it's incorrect. What **Parmar**... first of all, **Conservators**, the
27 decision of three judges. **Parmar** is a decision of two judges. If there was any difference of
28 opinion, My Lord, the reference could have been made at that stage, no such reference was
29 made. Why? Because the court in **Parmar** differed on facts. They said that the employee has
30 not submitted that he's working in an industry and therefore, the High Court has gone wrong
31 in deciding that it is an industry, because no such issue was raised. So, there is a conflict of
32 opinion. They don't overrule, nor do they seek to differ from **Conservator**. I will read
33 **Conservator**. **Conservator** basically talks about why Social Forestry is not a sovereign
34 function. That takes you into the arena of social welfare.

1 What is social welfare? We don't have a definition. I'll take you to that. So, I say it is respectfully
2 submitted that the error seems to have arisen in the order of the bench of three judges, and
3 I'm quoting that order. "One of the contentions which arises for consideration is whether the
4 Social Forestry Department is a welfare scheme of the government, is an industry or not. Our
5 attention has been drawn to the two decisions of the court in **Conservator** and in **Parmar**
6 and finally, they have taken a different view and sought to distinguish the earlier decision of
7 **Conservator**, it is submitted that the two judge bench in **State of Gujarat** did not take a
8 different view from the judgment in **Chief Conservator** on the question whether forest
9 Department is an industry, but held that the workman in question had not asserted that it was
10 an industry and that therefore the High Court erred in holding that it was an industry. The
11 finding turned on the question of fact, not of law. It is thus clear that there was no "cleavage of
12 opinion," as noted in para 3 of the reference order since the decision in **Parmar** did not take
13 a different view that the Forest Department is not an industry".

14 Next, My Lord. "Hence no cause arose for the Three-Judge bench to lay the papers before the
15 Chief Justice." Next My Lord. "The further reason for discharging the reference without any
16 opinion is contained in para 24 of the reference order. In any case, no such inhibition limits
17 the power of the bench of five judges, which has been constituted on a reference made due to
18 apparent conflict between judgments of the two benches of this court. As has been stated by
19 us above, the decision in **Bangalore Water Supply** is not a unanimous decision. On the
20 five judges who constituted the majority, they have given a common opinion, but two others
21 have given separate opinions, projecting a view partially different from the views expressed in
22 the opinion of the other three judges. Justice Beg, Chief Justice, having retired, had no
23 opportunity to see the opinion". This is in the reference order I'm reading, "had no opportunity
24 to see the opinion delivered by the other judges subsequent to his retirement. Krishna Iyer and
25 the two judges who spoke through him did not have the benefit of the dissenting opinion of
26 the other two judges and the separate partly dissenting opinion of Justice Chandrachud, as
27 those opinions were prepared in..." Now what is the *sequitur*? That is not mentioned. Does it
28 follow that **Bangalore Water Supply** is not a judgment in the eye of law? That is the
29 question you have to answer. It remains the judgment in the eye of law. Notwithstanding
30 anything, judgment is defined in the Civil Procedure code, go read that definition. It is a
31 judgment. And not only is it a judgment, it's a judgment of seven judges. Now, My Lord, I've
32 made that clear also. **Bangalore Water Supply** was a decision of a Seven-Judge bench
33 regardless of the fact that five judge majority was formed with two dissenting opinions by two
34 judges, the judgment remains a judgment of seven". I've given you the citation, I will not
35 bother you with the citation because it's a well-known proposition of law. But the citation has
36 been given. In para 19 of the citation, it is made clear that regardless of dissent, because of
37 Article 145 of the Constitution of India, it remains a judgment of seven judges. "It may be noted

1 that the decision in *Safdarjung* is oddly a decision of six judges where there could have been
2 a split, whereas the decision in *Bangalore Water Supply* is one of seven". Now My Lord,
3 that completes that. I will not trouble you any more with that.

4 Let me now go to another issue. What I'm arguing is that there is not enough data before this
5 reference to answer this question, and I'm recommending that Your Lordship calls for that
6 data. Now what is the data? "As has been conceded by the learned Attorney General of India,
7 any outcome in the present reference would be applicable only to pipeline cases, that is those
8 pending for decision before the repeal of the Industrial Disputes Act, by notification dated so
9 and so. It is thus suggested that before any judgment is delivered in the present matter, this
10 Honourable court may be pleased to direct the states", because they are the main litigants
11 before you, "to submit data of cases pending under the ID Act indicating the organizations
12 which they cover, whether university, club, hospital whether for profit or not, social welfare
13 activities, municipalities, local bodies and the state. The data will give us a picture of the nature
14 and extent of the issues for determination before this honourable court. It will also ensure that
15 the court is not deciding academic issues."

16 Now, My Lord, the note of caution I have already rendered. I'm only pointing out that without
17 doubt, the code of 2020 is going to be challenged, to the extent that it excludes charities and
18 fails to define what is a sovereign function, it fails to tell us the meaning of "social", it fails to
19 tell us the meaning of "philanthropic". We have to struggle here and there to find what is the
20 meaning of these things.

21 Now, My Lord, I'm moving on to the merits of the issue. Now, My Lord, I'm done with the
22 reference order; let me move on to the merits of the case.

23 **CJI SURYA KANT:** Probably following to the [UNCLEAR] cases.

24 **INDIRA JAISINGH:** Principles of interpretation this is what I said are the classical
25 principles My Lord, I'll just read it out culled out from the judgment itself. "At the outset, it is
26 stated that the submissions herein below are without prejudice to the above submissions. The
27 most concise statement, articulation of the interpretation of statutes in *Bangalore Water*
28 *Supply* is found in the judgment of Justice Beg, and I have reproduced it, My Lord. The
29 method which has been followed whether it is called interpretation or construction of a part
30 of an organic whole", pause here for a moment, My Lord. We are only urging before you to
31 read the statute as an organic whole, which is what Justice Krishna Iyer did. "In which the
32 statute, its objectives, its past and its direction for the future, its constitutional setting, are all
33 parts of this whole, which this... with their correlated functions. Perhaps it is impossible, in
34 adopting such a method of interpretation which some may still consider unorthodox, a certain
35 degree of subjectivity, but our attempt should be not to break the well-established principles

1 of interpretation in doing so. Progressive, rational and beneficial modes of interpretation
2 import and fit into the body of the old what may be new. It is a process of adaptation for giving
3 new vitality in keeping with the progress of thought in our times. All this, however, is not really
4 novel, although we may try to say it in a new way. If one keeps in mind what has been laid
5 down in the **Heydon's** case referred to by my learned brother Justice Krishna Iyer, the well-
6 known principle that a statute must be interpreted as a whole in the context of all the
7 provisions of the statute, the object, the preamble, and the function of various provisions, the
8 true meaning may emerge. It may not be strictly a dictionary meaning in such cases, indeed,
9 even in the modern statute and the meaning of a term such as industry may change with a
10 rapidly changing social and economic structure.

11 For this proposition I can do no better than to quote Justice Subba Rao speaking for the court
12 in so and so court. The legal position may be summarised thus, the maxim *contemporanea*
13 *expositio*, as laid down by Cooke, was applied to construing ancient statutes but not to
14 interpreting acts which are comparatively modern. There is a good reason for this change in
15 the mode of interpretation. The fundamental rule of construction is the same whether the
16 court is asked to construe a provision, or an ancient statute, or a modern one, namely, where
17 it is expressed intention of the Legislature. It is perhaps difficult to attribute to the legislature...
18 legislative body functioning in a static society that its intention was couched in terms of
19 considerable breadth as to take within its sweep, the future developments comprehended by
20 the phraseology used. It is more reasonable to confine its intention only to the circumstances
21 obtaining at the time of the law was made. But in a modern progressive society, it would be
22 unreasonable to confine the intention of a Legislature to the meaning attributed to the words
23 used at the time the law was made. For a modern legislator making laws to govern a society
24 which is fast moving must be presumed to be aware of an enlarged meaning. The same concept
25 might attract with the march of time and with the revolutionary changes brought about by
26 social, economic, and political, and scientific and other fields of human endeavour activity.
27 Indeed, unless the contrary intention appears an interpretation should be given to the words
28 used to make the new fact situation and the words are capable of comprehending them." Now
29 this is this interpretation of statute which has been used by the three judges, by Justice Beg
30 separately and My Lord, also by Justice Chandrachud separately. They are using the same
31 principles, My Lord.

32 I therefore submit, My Lord, no case is made out for reconsidering the decision unless you
33 come to the conclusion that they have not used these principles.

34 **CJI SURYA KANT:** Yeah.

1 **INDIRA JAISINGH:** There's no point in saying, I take one view, you take one view. The
2 *stare decisis* has held the field for 50 years, close to 47, I was making the calculation. Then My
3 Lord, I come to the object.

4 **JUSTICE B.V. NAGARATHNA:** 48, that's in February. We are now in March.

5 **INDIRA JAISINGH:** Pardon me, My Lord, if I'm vague with my dates. I'm a dinosaur in this
6 courtroom. I just told you that I appeared in a 1971 judgment of this court; so I tend to forget
7 years.

8 Next, My Lord, "the object of the Industrial Dispute Act 1947 is to provide a judicial forum."
9 I've said this, "is to provide a judicial forum in which disputes arising between employers and
10 workmen can be resolved towards the achievement of industrial peace." How can we forget it,
11 that the purpose of the Act is to achieve industrial peace. My Lord, it lays roadblocks and
12 barriers and draws red lines on the right to strike. If it was not for the Industrial Disputes Act,
13 you would see wildcat strikes all over the country. The minute a dispute is admitted in
14 conciliation, strikes become illegal. The famous **Gujarat Steel** case of this court, again
15 decided by Justice Krishna Iyer, where the 300 people were dismissed from going on an illegal
16 strike. Why? Because conciliation proceedings were pending, so the whole object of this Act is
17 to prevent that kind of illegal strike and to make conciliation possible. And My Lord, to divert
18 disputes from the street to the courts. Industry... So, it is in the interest of employers and
19 employees to have the Industrial Disputes Act in place. "...towards the achievement of
20 industrial peace and the avoidance of conflict in the form of strikes and lockouts. Although the
21 right to strike forms part of the right to collective bargaining, the Act seeks to regulate that
22 right, essentially when it comes to...," now My Lord, this is the real giveaway, especially when
23 it comes to public utilities. Now My Lord, the argument that this Act cannot apply to
24 governments is given away the minute you read the definition of "public utility" in the Act. It
25 squarely covers governments.

26 Let's pause and read the definition of "public utility". In public utilities, strikes are actually
27 prohibited. Why? Because it is in public interest that essential services are not disrupted, My
28 Lord, say fire services, say hospitals. My Lord, 2(n). 2(n). And this is what Justice Krishna Iyer
29 uses. 2(n). Public utility service means railway service. Who runs railways in this country?
30 "Any service in or in connection with the working of a major port dock, industrial
31 establishment or unit engaged in essential defence services. Any section of an industrial
32 establishment on the working of which the safety of the establishment, the workmen employed
33 therein depends. Postal, telegraph, telephone, any industry which supplies, power, light,
34 water, public system of public conservancy and sanitation, any industry specified in the First

1 Schedule." Now go to the First Schedule. All these are public services, public utilities where
2 strikes can be completely banned, in public interest.

3 Now, let us look at the list of services. In the teeth of this, how can it be argued that enterprises
4 run by the government cannot be covered by this Act? Which was the argument made before
5 you by Mr. Naphade. Please see at page... Schedule 1 to the Act. "Transport. Other than
6 Railways, for the carriage of passengers or goods by land or water, banking, cement, coal,
7 cotton textiles, foodstuffs, iron and steel, defence establishments, services and hospitals and
8 dispensaries, fire brigade services, Indian Government mints." Obviously, all covered by the
9 Act; therefore, excluded. "Indian security press, copper mining, lead mining, zinc mining," I
10 know.

11 These are the hospitals that [UNCLEAR] came before this court. Safdarjung Hospital came
12 before this court. How does it lie in their mouth to say that we are not an industry? My Lord,
13 that is as far as interpretation is concerned. I come back to my written document.

14 **JUSTICE DIPANKAR DATTA:** [UNCLEAR] submission that this is a welfare legislation, if
15 two constructions are possible on a reading of the legislation, you find out what is the object
16 of the Act and thereafter, read it in a manner so that it furthers the welfare of the class of people
17 for whom the legislation has been brought.

18 **INDIRA JAISINGH:** With respect, yes, My Lord. Except that I have explained what I mean
19 by 'betterment of' by 'beneficial to the people' by that I mean access to justice. That's all we are
20 asking for. We're not asking you to reinstate me now. We're just saying give me an opportunity
21 to go to a competent court of law, and ask for myself to be reinstated when I'm fired from my
22 job. That is the purpose of this legislation. Yes, My Lord, Your Lordship...

23 **CJI SURYA KANT:** [UNCLEAR] there is no dispute about it that is a beneficial legislation
24 as rightly argued. You are also, rightly saying that the workmen who will be covered under
25 the... within the ambit under this Act is entitled to certain statutory protections. Like you are
26 referring to wages; wages are not covered under this Act, but there is a Payment of Wages Act,
27 Minimum Wages Act are there, those statutes are there...

28 **INDIRA JAISINGH:** Yes, My Lord.

29 **CJI SURYA KANT:** Factories Act, there are...

30 **INDIRA JAISINGH:** Yes My Lord, the argument...

31 **CJI SURYA KANT:** But retrenchment part is taken care of.

32 **INDIRA JAISINGH:** Yes, reinstatement... reinstatement is taken care of.

- 1 **CJI SURYA KANT:** Disciplinary action is taken care of.
- 2 **INDIRA JAISINGH:** Yes, it is.
- 3 **CJI SURYA KANT:** Quantum of punishment is taken here so you have in 11A, meaning 142.
- 4 **INDIRA JAISINGH:** Yes.
- 5 **CJI SURYA KANT:** In order to do complete justice...
- 6 **INDIRA JAISINGH:** Yes.
- 7 **CJI SURYA KANT:** 11A gives kind of that power which normally...
- 8 **INDIRA JAISINGH:** Your Lordship said it. Hit the nail on the head. I didn't want to use 142
9 because we have lot of complaints about 142, keeping that aside.
- 10 **CJI SURYA KANT:** We are saying that when you want to use, you use 142; when you want
11 to criticize, you criticize 142; that we understand. That is the prerogative on this side.
- 12 **INDIRA JAISINGH:** But I'm not opening my mouth on 142. 142 was used in the *Union*
13 *Carbide* case.
- 14 **CJI SURYA KANT:** Anyway...
- 15 **INDIRA JAISINGH:** That is my case. I don't want...
- 16 **CJI SURYA KANT:** It must have been used hundred times in your favour also; that we are
17 not on that issue, because that is the privilege on this side, you can argue.
- 18 **INDIRA JAISINGH:** Yes, yes, but there are powers akin to 142 to do complete justice. I
19 agree.
- 20 **CJI SURYA KANT:** Because 11A is an instrument given to the Tribunal or the court,
21 Industrial court to do that when you find that offensive, say the misconduct is very small, the
22 punishment is coming like a hammer, why should we dismiss? Why not a warning, sense or
23 stoppage of one increment, a small increment, we save the employment, his family is saved.
24 So, all these powers are definitely there. Ultimate issue probably with both side is that who are
25 those workmen? It's a question of identifying who are those industry?
- 26 **INDIRA JAISINGH:** Yes.
- 27 **CJI SURYA KANT:** Whose workmen...
- 28 **INDIRA JAISINGH:** And who are those workers?
- 29 **CJI SURYA KANT:** Whose workmen are entitled to protection.

1 **INDIRA JAISINGH:** Because those who are covered by other better legislation we are not
2 asking to bring them over here.

3 **CJI SURYA KANT:** There your argument is that this being a beneficial legislation, one, it
4 should be a very liberal interpretation, and liberal interpretation the endeavour should be to
5 include as much establishments as it can be, unless there is an express or implied bar which
6 will really prohibit to declare someone as industry. Probably that is the...

7 **INDIRA JAISINGH:** Yes.

8 **CJI SURYA KANT:** Broad framework of the argument.

9 **INDIRA JAISINGH:** The question of expression inclusion... exclusion will arise in the 20
10 code. There is an express exclusion over there. So, that is a battle for another day. Don't worry
11 My Lord, we'll be here back before you...

12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The Charging provision so to say in
13 the sense what triggers the Act is actually not the workers. We are putting this question to you
14 because I'm looking for an answer. It doesn't go by the workmen; it goes by the definition of
15 an industry. So, therefore, through the window of the industry that the Act which stitches large
16 number of remedies, large number of remedies, also provisions a number of protections. But
17 for accessing all of them, the window is through the definition of industry. But your emphasis
18 that it is worker-based and protection of the worker is slightly different, despite the fact the
19 group of workers in a particular organisation might definitely need that kind of protection, but
20 if it so happens that the industry doesn't come within the ambit or the net of the Act, then
21 that's not accessible. Just explain that please.

22 **INDIRA JAISINGH:** That My Lord, Justice Krishna Iyer takes care of that while dealing
23 with charity and classifying it into three different categories. The third one, he says, is purely
24 spiritual. And he also points out that there are organisations where there is self-service like in
25 an *Aashram*. The activity may be organised, it will fulfil the first two requirements, or it might
26 fulfil all the requirements of the triple test, but however, the labour may be voluntary. My Lord,
27 there are many organizations in which... I wash my own dishes, I self-serve my food, I wash
28 my own dishes. It's a form of *seva*. So, perhaps, that is the window of organizations which will
29 not be covered. My Lord, yes, there's so much confusion in decisions of this court, I don't know
30 where to begin and where to end. You just take the question of inalienable sovereign functions.
31 What has been said by this Court? Legislature...

32 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It's not the statute. Sovereign was not
33 part of the statute.

34 **INDIRA JAISINGH:** I beg My Lords pardon?

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That requirement of excluding
2 sovereign function was not part of the original definition. It came by way of an explanation to
3 the definition.

4 **INDIRA JAISINGH:** Yes, My Lord, it came on a question what to exclude. It came on that
5 question what to exclude.

6 **JUSTICE B.V. NAGARATHNA:** It has come from the tort liability issue. *Vidyarthi vs.*
7 *State of Rajasthan.*

8 **INDIRA JAISINGH:** *Rajasthan vs. Vidyarthi, Vidyarthi vs. Rajasthan*

9 **JUSTICE B.V. NAGARATHNA:** Tortious liability.

10 **INDIRA JAISINGH:** It started with Tortious liability where this court said a truck driver
11 who was hit by a truck, a person hit by a truck owned by the state whether he is immune from
12 liability or not? The argument was it's a sovereign function. So, this is where the line of cases
13 begin. But My Lord, it actually begins much earlier. There is a case decided in the pre-
14 independence period whether the East India Company was liable because the East India
15 Company had a dual function; it was sovereign function as well as it was a trading company.
16 So, there the court says no, this is not a sovereign function that gets continued in *Vidyarthi*.
17 And ultimately My Lord, the whole concept of sovereign function gets abandoned except
18 inalienable, which is what? Which is legislation, which is justice.

19 Now, My Lord, we are told that dispensing justice is a divine function. Yes, My Lord, it is a
20 divine function, so maybe it will not be covered by the definition of industry, but I ask you a
21 question, what about a sweeper working in your courtroom? All right, all these staff working
22 are protected by 311, but there are people inside this courtroom who are not protected by 311.
23 All your canteen contract workers... so many, My Lord. The situations can be innumerable.
24 Therefore, the test is first of all, you have to understand the meaning of sovereign functions
25 and ultimately the question raised by My Lady, what about LPG? I will answer that question
26 also, My Lord. Because at one point it was said that; that which cannot be done by a private
27 party is a sovereign function. Now you're allowing your nuclear energy plants to be
28 manufactured by private Parties.

29 **JUSTICE B.V. NAGARATHNA:** See, it doesn't depend on who is doing that activity. It is
30 what is that whether it is the State, Government or Private. Because earlier it was all by the
31 government. Now it is all privatization. It is not who is doing that activity. What is that activity
32 is more important. Nature of it.

33 **INDIRA JAISINGH:** My Lady, this is what Justice Krishna Iyer said, it is not the motive, it
34 is the way it's organized. How is your activity; it's a functional definition. How is it organized?

1 Is it systematic. If it's casual, it's not an industry. Is there cooperation of the workers? Yes, it's
2 an industry. So, that is why I said the triple test is a normative test. It gives you the norm by
3 virtue of which you're going to take your decisions in times to come. And that is why, all right,
4 My Lord, let me deal straight away with the question of charities. Tell me where will you find
5 a different definition of charity? You'll find it only in the Income Tax Act of 1961, Section 16.
6 Now you go there and see what is excluded under charity. Every single hospital, every
7 university is a charity. What will you do? They all have exemption under the Section 15 of the
8 Income Tax Act, every one of them. You have the concept of deemed universities now. The
9 private universities are universities, what are they doing? Are they performing a charitable
10 purpose? They are charging those high fees which generate those profits. And what Justice
11 Krishna Iyer is saying is it doesn't matter to the workers whether you put that surplus back
12 into the organization, I'm concerned with the labour I'm putting in it. You are putting surplus,
13 I'm putting labour. Therefore, the triple test. If that triple test is satisfied, how can you exclude
14 charities? You can do as much charity as you want; we are not stopping you. I've made a note
15 of it. My Lord, Tata Sons is covered by a charity, Tata Trust, Tata Memorial Hospital is covered
16 by charity.

17 **JUSTICE B.V. NAGARATHNA:** For the purpose of Income Tax Act?

18 **INDIRA JAISINGH:** Yes, yes, why am I talking about it, because this Act doesn't give you a
19 definition of charity. Where will you look for a definition of charity? You will go to cognate
20 legislation, you will go to other laws which can give you some guidance on what is a charity.
21 Or you might use a layman's understanding that I will give you free food; that is my charity.
22 We all, all of us are bar and what to talk of professions? Please read the paragraphs in the
23 ***Bangalore Water Supply***, about the legal profession, it will be an eye opener for you. I'm
24 not going to read any quotes, sure, who says all professions are a conspiracy against the laity.
25 What can I tell you about my profession that you don't know already? That we are declaring
26 an income of 3 crores a year. We, meaning, some.

27 **JUSTICE B.V. NAGARATHNA:** : Lawyer's profession was mostly individual based. In...

28 **INDIRA JAISINGH:** We meaning, some. I don't declare.

29 **JUSTICE B.V. NAGARATHNA:** In 70s, one of the reasons for exclusion, one of the reasons
30 of exclusion of the profession in 70s it was based, you know, small law firms or individual.

31 **INDIRA JAISINGH:** Yes.

32 **JUSTICE B.V. NAGARATHNA:** Today, you have huge law firms.

33 **INDIRA JAISINGH:** I can... I can...

1 **JUSTICE B.V. NAGARATHNA:** The kind of contribution made by non-lawyers in a law
2 firm is very proportionately high nowadays than what it was in the 70s, that is what Jaswant
3 Singh has said.

4 **INDIRA JAISINGH:** I want to My Lord at this point mention. At this point, My Lord, I would
5 wish to acknowledge in my... drafting my submissions, I would wish to acknowledge my debt
6 of gratitude to two interns of mine who are law students, who have helped me to prepare. This
7 is the contribution made by law students to these written submissions, My Lord.

8 **JUSTICE B.V. NAGARATHNA:** No, the other clerks and others, those who work on
9 computer, those who take out thousands of pages of photocopies, stenographers, so many non-
10 lawyers are now employed in huge law firms. Now whether they should be out?

11 **INDIRA JAISINGH:** They should not be out, they cannot be out, if you use the triple test.
12 And they can't argue their charities, can they? I will name the firms because they are all my
13 personal friends. I have worked with all of them. I've worked with Cyril Shroff, I've worked
14 with Shardul Shroff, I've worked with Zia Modi, each one of these was my contemporary, my
15 junior. I know the firms they run. We all know it. So, again My Lord, that is for another day.
16 Today my task is to convince you what is the logic for including these within the judgment.
17 They have been included, hospitals have been included. Universities, education is included. In
18 the *T.M.A. Pai* case in this court, universities, T.M.A. Pai College claimed the protection of
19 article 19(1)(G). We are in occupation, we are a calling.

20 But are they making money? Yes. Are they charity? Yes. I went and looked up which of the
21 organisations registered under the Income Tax Act as charity. Half your Law colleges are all
22 registered over there, and hospitals.

23 **CJI SURYA KANT:** Yes.

24 **INDIRA JAISINGH:** So, to exclude them that is the logic why Justice Krishna Iyer included
25 them. That is my limited submission before you, that please don't interfere with that exclusion
26 at the behest of whom, and on whose behest are we doing this? And as I said, the curious part
27 Your Lordship must investigate why are only the States here before you? All states. What do
28 they want excluded? They want excluded social welfare, and the submission was made over
29 here that because of Part 4 they all become sovereign functions. I'm saying you're putting the
30 Constitution on its head. Because of Part 4, they all come in. Because of Part 4 they can all be
31 done by the private sector. Because of your LPG policy, they are being done by the private
32 sector. How can you use that as an argument to say exclude Social Forestry? Even Mr. Naphade
33 was representing Forestry. I don't know what it is about the Forest Department that makes
34 them so panicky and anxious about the fact that their workers are going under Industrial

1 courts. It defies my imagination. I don't know why all cases which come to the court are Forest
2 Department. And except that I also had the good luck to argue the **Conservator of Forests**
3 case, which is the *locus classicus* on the question of sovereign functions, where the court says
4 inalienable. What is inalienable? Your Lordship can't alienate the function of justice to
5 anybody. The Legislature can't alienate the function of making laws to anybody. These are the
6 classical, and that too, one... I've put it in my document, but I want to explain this point. What
7 is it about sovereign functions that makes it excluded? I'll tell you what it is. And it is there in
8 one of the judgments. It is the fact that some of these questions are political questions
9 classically defined by courts that political questions, not subject to judicial review. If I were to
10 file a petition before you saying that Operation Sindoor should not have happened, will you
11 entertain the petition? No. Because it is a public... because it is a political question which the
12 court... where there is no judicial review. That is the meaning of sovereign functions, where
13 you have the question is a political one, and therefore, no court of law can question it.

14 **CJI SURYA KANT:** Yes, we got it.

15 **INDIRA JAISINGH:** So, therefore, My Lord, let us be very careful when we use words like
16 "sovereign function" to interpret a democratic Constitution. A Constitution which sets up a
17 republic, and a Constitution which has Part 4.

18 Now I'll just read further. The judgment, the effect reads as follows. "The relevant
19 constitutional entries speak of industrial and labour disputes. Entry 22 List III, Schedule 7.
20 The Preamble to the Act refers to the investigation and settlement of industrial disputes. The
21 definition of "Industry" has to be decoded in this background. And our holding is reinforced
22 by the fact that industrial peace, collective bargaining strikes and lockouts, industrial
23 education workers, committees of employers and employees, and the like can connote
24 organised systematic operations and collectivity of workmen cooperating with their employers
25 in producing goods and services for the community." Triple test. "The betterment of the
26 workman's lot, the avoidance avoiding the outbreak and blocking production in the interest of
27 the public are the concern of the community. In trade and business goods and other services
28 are to be common for the community, not for self-consumption." Again an answer to My Lord
29 Justice's question on what is excluded, what is for self-consumption, over here. Again there's
30 an answer. Now then of course, I've said it is submitted that when we read the Preamble of the
31 Act and the objects to be achieved, the decision in **Bangalore Water Supply** is good law
32 and does not require reconsideration. The word "Industry" must be interpreted not only in the
33 light of the objective fact but also in relation to the definition of workmen industrial dispute.
34 It is further submitted that **Bangalore Water Supply** interpreted the definition of
35 "Industry" with reference to Part 4 of the Constitution. It is also held that the decision that
36 even though the statute is a pre-constitutional enactment, it must be interpreted in the light

1 of Part 4 and there's a quotation there. The penumbral area arrives as we move on to the other
2 essentials needed to take an organised, systematic activity oriented on productive
3 collaboration between employers and employees, and "Industry" as defined in Section 2(j).
4 Here, we have to be cautious. Now, My Lord, this is very interesting. This is the actual guidance
5 what my Lord was asking, Justice Narasimha. "Definition expansionism broadening the on
6 *reductio ad absurdum* to truncate the obvious amplitude of the provisions." What the court is
7 saying is we can't fall into both traps. We cannot widen it too much; we cannot narrow it too
8 much. "Subjective which shall not be farther to the forensic thought, if credibility of a pluralist
9 community is a value to be cherished." Court is saying we have to be just to both sides. Now,
10 My Lord, courts do not substitute their social and economic beliefs for the judgment of
11 legislative bodies. C. Corbyn even so, this legislation has something to do with the social justice
12 between the haves and the have nots. Does it or doesn't it? My answer is yes; it has something
13 to do with the haves and have-nots. And naive, fugitive and illogical cutbacks on the import of
14 industry may not... may do injustice to the benignant enactment... Now, My Lord, this is, this
15 required me to get a dictionary, but I will tell you what this means it's very interesting, My
16 Lord. He's referring to two Greek monsters. "Avoiding *Scylla* and *Charybdis*. We proceed to
17 decipher the further import of the..." Now, My Lord, when I looked it up, I found that these
18 are two monsters on the side of a river; one is clinging to one side, one is clinging to the other
19 side. And there is a ship that is navigating between these two monsters trying to pass through.
20 If you go too much on one side, one monster will catch you, if you go too much on the other
21 side, the other monster will catch you. So, Justice Krishna Iyer is saying my task is difficult, I
22 have to avoid the overbreadth, I have to avoid the over narrowing, and I have to navigate my
23 ship between these two and that I submit is what **Bangalore Water Supply** has done. "We
24 proceed to decipher the fuller import of the... To sum up, the personality of the whole statute,
25 be it remembered, has a welfare basis; it being a beneficial legislation protects labour,
26 promotes their commitment, and regulates situations of crisis and tension. Their production
27 may be imperilled by unattainable strikes and blackmail lockouts. The mechanism of the Act
28 is geared to conformance of regulated benefits to the workmen and resolution according to a
29 sympathetic rule of law to the conflicts, actual or potential between management and
30 workmen. Its goal is ameliorative of the conditions of the workers, tempered by a practical
31 sense of peaceful coexistence to the benefit of both, not a neutral position but restraints on
32 *laissez faire* and concern for the welfare of the weaker lot. Empathy with the statute is
33 necessary to understand not merely its spirit, but also its sense. One of the vital concepts on
34 which the whole statute is built is Industry. And when we approach the definition of Section
35 2(j), we must be informed by these values. This certainly does not mean that we should strain
36 the language of the definition or import into it what we regard as desirable in an industrial
37 legislation, for we are not legislating *de novo* but construing an existing act. Crusading for a

1 new type of legislation dynamic ideas of humanist justice and industrial harmony cannot be
2 under the umbrella of interpreting an old, imperfect enactment. Nonetheless, statutory diction
3 speaks for today and tomorrow; words are semantic seeds to serve the future, ours. Moreover,
4 and earlier, highlighted it is legitimate to project the value set of the Constitution especially
5 Part 4 in reading the meaning or even the pre-Constitutional statutes." This is the authority
6 My Lord, for the proposition that pre-Constitutional statutes also must be held to this
7 standard. "The paramount law is paramount, and Part 4 sets out Directive Principles of state
8 polity which must guide the judiciary like other instrumentalities in interpreting all legislation,
9 statutory construction is not a petrified process, and the old bottle may, to the extent, language
10 and realism permit be filled with new wine." Now look at the last sentence. Of course, the bottle
11 should not break. So, **Bangalore Water Supply** has not broken the bottle.

12 **CJI SURYA KANT:** Last line. Bottle should not break and lose...

13 **INDIRA JAISINGH:** Yes. So, My Lord, the triple test in **Bangalore Water Supply** has
14 been spelled out based on the object of the Act etc. that I've already told My Lord. Kindly turn
15 to the next page.

16 **CJI SURYA KANT:** Indiraji, next point we are raising, that, probably that you need to
17 enlighten. The next, the very next point.

18 **INDIRA JAISINGH:** Whether the constant...

19 **CJI SURYA KANT:** That the consequence of defining...

20 **INDIRA JAISINGH:** The consequence, I'll come to the consequence. "It is respectfully
21 submitted that the only consequence of defining industry in the manner done by **Bangalore**
22 **Water Supply**, is to provide workmen with the remedy to ventilate their grievances", I've
23 said that, My Lord. "In relation to fixing of wages, health, safety, occupational safety, security
24 of employment it does no more or no less than that. A democratic society governed by the rule
25 of law is duty bound to provide a grievance redressal forum of a judicial nature to all its
26 citizens, where their substantive rights can be ventilated. The Industrial Disputes Act does no
27 more, no less. And hence the law declared in **Bangalore Water Supply** causes no prejudice
28 to employers, other than facing a competent labour court." Then...

29 **CJI SURYA KANT:** Civil suit, you've already explained.

30 **INDIRA JAISINGH:** I said that earlier. I said that earlier, My Lord. Yeah, when I referred
31 to **Firestone**. This was the argument in **Firestone**. Then I've said, I'll skip that, I've said it
32 earlier, filing a civil suit is not a remedy.

33 **CJI SURYA KANT:** Not a remedy. That you have already explained.

1 **INDIRA JAISINGH:** Now My Lord finally, the issue of sovereign functions. "The word
2 "sovereign function" is misplaced in a democratic society. The Honourable court in **Chief**
3 **Conservator of Forests** referred to the inalienable governmental functions, the
4 Honourable Court and Chief conservator said, "we may not go by labels, let us reach the hub
5 and the same is that the dichotomy of sovereign and non-sovereign functions does not really
6 exist. It would all depend on the nature of the power and the manner of its exercise, as
7 observed in the **Nagendra Rao** case. As per the decision in the case, one of the tests to
8 determine whether the exclusive function is sovereign in nature, is to find out whether the
9 state is answerable for such actions in a court of law." This inspired my proposition, that a
10 political question is not answerable in a court of law. I cannot raise a question that the state
11 has no right to go to war. So, the learned judge is saying, "not answerable in a court of law. Not
12 answerable in a court of law." It was stated by Sahai J, that acts like defence of the country,
13 defence of the country, not a printing press, when you're going to war, raising armed forces
14 and maintaining it, making peace or war, foreign affairs, power to acquire and retain property
15 of function, territory. Acquisition of territory beyond the borders of Bharat, you can acquire
16 territory, or you can cede territory; those are sovereign functions.

17 **CJI SURYA KANT:** I think the first line of your next paragraph answers everything.

18 **INDIRA JAISINGH:** May I move to that My Lord? It is submitted that, strictly speaking,
19 sovereign functions are only those which are not only inalienable but also classically referred
20 to as the political question, My Lord. This proposition is culled out from that judgment. As I
21 said, it's inspired by the judgment, even for me, even for me it came as a revelation because
22 I've been wondering why certain petitions are rejected by the court, till I came to the
23 conclusion that, they may be raising political questions, which are not justiciable. So, you
24 can't... I can't come to court and say, why did the country go to war. I will be told it's a political
25 question, not justiciable in a court of law. Those are sovereign functions. So, there's an overlap
26 between questions which are political questions and the ones which are sovereign functions.
27 Then My Lord, in **Conservator**, again they said, "The aforesaid shows that if we are to extend
28 the concept of sovereign functions to include the welfare activities as contended on behalf of
29 the Appellants, the ratio in **Bangalore Water Supply** would get eroded substantially. We
30 would demur to do so on the face of what is stated in the aforesaid case according to which
31 except the strictly understood sovereign functions, welfare activities of the state would come
32 within the purview of the definition of "Industry" and not only that, even within the wider
33 circle of sovereign functions". The LPG issue comes in here. Wider circle. "The aforesaid being
34 the crux of the scheme to implement which some of the Respondents were employed, are of
35 the view that the same cannot be regarded as part of the inalienable, inescapable functions of
36 the state. But the reason that the scheme was intended even to fulfil the recreational and

1 educational aspirations of the people. We are in no doubt that such a work would well be
2 undertaken by an agency which is not required to be an instrumentality of the state." Again a
3 test. There's a test. Then, My Lord...

4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Charitable.

5 **INDIRA JAISINGH:** Charitable purpose.

6 **CJI SURYA KANT:** Charitable, you have already argued.

7 **INDIRA JAISINGH:** I have argued. I will...

8 **CJI SURYA KANT:** This you need to. This LPG.

9 **INDIRA JAISINGH:** LPG, LPG gas is in short supply. I'm thinking of filing a petition before
10 you but I will not want a decision right now saying that I'm not getting my LPG gas.

11 **JUSTICE B.V. NAGARATHNA:** You can make that.

12 **INDIRA JAISINGH:** But don't give a judgement till I file the petition.

13 **CJI SURYA KANT:** But we really liked the short term because I said why LPG has come?
14 Then I realized liberalization, privatization and globalization.

15 **INDIRA JAISINGH:** I picked it up from Justice Nagarathna. We have a different word for
16 it, but never mind.

17 **JUSTICE B.V. NAGARATHNA:** No, I said that in my reply to the welcome speech, when I
18 became a judge in 2008, that as a judge we now need to be aware of what is happening globally.
19 In 2008, February 18th I said it, that liberalization, privatization and globalization is
20 something we should consider while deciding cases.

21 **INDIRA JAISINGH:** Yes, My Lord.

22 **JUSTICE B.V. NAGARATHNA:** So, I said LPG then.

23 **INDIRA JAISINGH:** Without knowing that one day LPG will be in short supply.

24 **CJI SURYA KANT:** Now it acquired a new meaning.

25 **INDIRA JAISINGH:** At that time LPG was plentiful.

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

27 **INDIRA JAISINGH:** Then I want to read this, "It is submitted that there has been a sea
28 change in the approach of the Union of India to the question of what should be and should not
29 be governed by functions due to the policies such as disinvestment and the new Public Sector

1 Enterprise policy which permits the entry of private players in strategic sectors formerly
2 considered sovereign functions. It has been noticed that sectors such as defence, nuclear
3 energy have also been open for privatization, subject to the limitation mentioned in the said
4 policy. See separate note". I'll just read that short note. "It is submitted that the greater the
5 implementation of LGC, LGP, the greater the applicability of the Industrial Disputes Act". That
6 is the implication of it.

7 **CJI SURYA KANT:** Next line also, "The greater the nature of activity...", that will be
8 [UNCLEAR].

9 **INDIRA JAISINGH:** "The greater the nature of the activity will be governed by the
10 definition of industry as laid down in *Bangalore Water Supply* for the reason that the
11 sectors liberalised...", these to be...

12 **CJI SURYA KANT:** [UNCLEAR].

13 **INDIRA JAISINGH:** Applicable... Applicable law. The greater the LPG, the greater the
14 applicability of the Industrial Disputes Act. That is my submission. Just one minute. I will just
15 read a short note which I've circulated on what are the sectors that are being liberalised. It's
16 already there on the record, a note. What is the Indian Government's approach to
17 privatisation? That is the heading. First, they have published a disinvestment policy. It's all,
18 I'm reading from policy. Is the document there? It's part of the submissions. Just conclude the
19 submissions and turn over, you'll find a note, "What is the Indian government's approach to
20 privatization?" All this is taken from official sources. First thing is "The Disinvestment policy
21 consists of strategic disinvestment, entire substantial sale of government shareholding in
22 Central Public Sector Enterprises, and transfer of management and control. Privatization is
23 subject of strategic disinvestment, where the government equity in CPSE and its management
24 control is transferred to a private strategic buyer. Minority stake sale carried out without the
25 transfer of management control, the various SEBI approved methods such as Inter Public
26 Office, office for sale, buyback of shares etc".

27 Next. "New Public Sector Enterprises policy. Aatmanirbhar Bharat. The policy intended to
28 minimize the presence of government in the PSEs across all sectors of the economy".

29 "Strategic sectors. It delineates four strategic sectors based on a criteria of national security,
30 energy security, critical infrastructure, provisions of financial activities and availability of
31 important minerals; aims for a limit of four PSC of the holding nature of strategic sectors".

32 Next. "Strategic sectors will remain under government control where minimum presence of
33 the existing public sector commercial enterprises at holding company level. The remaining
34 will be considered for privatization, merger or standardization with another PSC for closure.

1 The identified strategic sectors are atomic energy, space, defence, transport,
2 telecommunication, power, petroleum, coal and other minerals, banking, insurance, and
3 financial services.

4 Non-strategic sectors. All PSCs will be considered for privatization where feasible or closure
5 exclusions the policy does not apply to certain classes of public sector entities, namely not-for-
6 profit companies. CPSE providing support to vulnerable groups for having development
7 promotional roles.

8 Updates. After the budget of 2025, Honourable Minister Nirmala Sitharaman highlighted that
9 privatization remained a cabinet-based commitment that will have to be kept up with. At
10 Budget 2026, Minister Sitharaman stated, that all previously approved disinvestment will
11 continue. Disinvestment and closure of Public Sector Units..."

12 **CJI SURYA KANT:** I think we can't comment...

13 **INDIRA JAISINGH:** My Lord, only one more thing to read the **SHANTI BILL** where even
14 nuclear energy, some parts of it are being privatized. It's there in the document; I will not read
15 it. Enables limited privatization in the nuclear sector. The whole...

16 **CJI SURYA KANT:** This information which you have brought on, in the note, is only for our
17 consumption to understand that.

18 **INDIRA JAISINGH:** Only for understanding that they are not sovereign functions, only for
19 understanding how not to interpret sovereign functions, and also why not to take away these
20 sectors from the protection in the name of, in the name of sovereign functions, My Lord. So,
21 actually. Now, My Lord, that is why I said the danger of the interpretation in the new Act, they
22 have used an inclusive definition. First of all, they have not defined "charitable purpose".
23 Secondly, they have not defined what is a "social purpose". Thirdly, they have not defined what
24 is "philanthropy". Fourthly, they have not defined what is a "sovereign function". But by way
25 of illustration, they have said space, atomic energy, and defence. That's the three sectors which
26 they identify as sovereign functions. There also, my submission is yes, they are sovereign
27 functions but at the level of decision-making. That is why the Doctrine of Severability where
28 Justice Chandrachud says if there's a mint, when you're coining, producing coins, is a
29 government function, you can't; a private person can't do it. But a worker in a mint that can
30 be separated from the function from the sovereign function and that person can be given the
31 protection is given their all the mints; are all the mints in India are registered under the
32 Factories Act, all of them. Then how does it lie in their mouth to argue? My Lord, I've given
33 that. That is a judgment which takes the view, that takes the view that it's a bench of nine.

34 **CJI SURYA KANT:** That compilation, we have already.

1 **INDIRA JAISINGH:** My Lord, I have a written submission which was originally filed; I will
2 not trouble you by reading it. I will it's on the record. As I said, I've made you two submissions.
3 One before listening to them, and one after listening to them. So, the one which I've read out
4 is the one which is after listening to them, but the one before listening to them is also on the
5 record. I will only request you to read it, I will not trouble you with it.

6 **CJI SURYA KANT:** That's there on record.

7 **INDIRA JAISINGH:** My Lord, only one last thing My Lord. There's an interesting quote in
8 and I will stop with that no more quotes by Justice Krishna Iyer, but this one is a must. My
9 Lord, on the question of charity, the argument was that, for us, it's a mission. We are, it's a, we
10 are doing a mission. For me it is a mission. For example, if I say for me doing legal aid is a
11 mission, in other words a passion. So, Justice Krishna Iyer says and please read that one
12 sentence; it's really worth reading. He says, "All of life is a mission and a life without mission
13 is a stillborn life." Well worth reading, My Lord, at least I took that statement to heart and I
14 use it in my professional work. Thank you.

15 **CJI SURYA KANT:** Thank you. Thank you, very much. Yes, Mr. Singh. Only left out point.
16 So [UNCLEAR] has very exhaustively explained.

17 **CHANDER UDAY SINGH:** Lords, I'm appearing for the Federation of Unions, new trade
18 union initiative, which is one of the few nationwide...

19 **CJI SURYA KANT:** For us broadly, all of you are representing workers whether federation...

20 **CHANDER UDAY SINGH:** No, I only want to point this... I only want to point this out in
21 one sentence, this is one of the few nationwide federations with more than 10,000 members,
22 which is completely non-political, it is by constitution, it is not allowed to align with any
23 political party or any political dispensation. So, it's a completely independent federation, only
24 works with the workmen. Now I'll just break up my arguments into four broad areas and I'll
25 just delineate them or outline them for Your Lordships.

26 The first is on a practical level, whether, My Lords, it's this exercise which Your Lordships are
27 very painstakingly taking up by learned nine judges bench, whether it can yield a fruitful or a
28 workable outcome. So, the first I'll be very brief on that on the practical aspect. Then on the
29 five judge bench, because the only bench which has actually made the reference, my learned
30 friend Ms. Jaisingh, has rightly pointed out about the lack of any justification with regard to
31 conflicts between two judge benches and all, but ultimately, the reference has been made by a
32 five judge's bench and the seven judge's bench before whom we all opposed... you know,
33 bumping it up further one more step, the learned seven judges bench has just said that it's an
34 important question of law arises and the five judge bench has given reasons, therefore we

1 bump it up. Their Lordships in the seven judges bench have not... it's a one and a half
2 paragraph order.

3 **CJI SURYA KANT:** That's why we yesterday also indicated now we are not going to... in
4 history. The mistake started after *Safdarjung* or afterwards?

5 **CHANDER UDAY SINGH:** No, no, I'm going to... I'm going to point out that that the issues
6 flagged... the four issues flagged by the five judges bench, are not issues at all, they don't arise,
7 either from *Safdarjung* or from *Bangalore Water Supply*. I need to place that before.
8 That's the second limb.

9 **CJI SURYA KANT:** We are only assuring that since nine of us are sitting, we are keeping our
10 hope alive that it will do some meaningful job.

11 **CHANDER UDAY SINGH:** Yes, absolutely, My Lord. We want, we want, we want ultimately
12 My Lord, any outcome for to be a productive and workable outcome. I have some... and it's a
13 practical thing which I'll place before Your Lordship in a moment.

14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So, tell us that thing...

15 **CHANDER UDAY SINGH:** May I start with that, My Lord... wants me to start, the other
16 points I'll come to later. So yesterday...

17 **JUSTICE DIPANKAR DATTA:** Indulge in some industry.

18 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR]

19 **CHANDER UDAY SINGH:** Absolutely, but I'll tell you what the difficulty is. It's a practical
20 difficulty, it's a difficulty, I'm not... I'm... it's not that we want to create a hindrance for the
21 bench; it's a difficulty as to what we foresee what can come out and I'll tell Your Lordships
22 what it is in a moment.

23 **CJI SURYA KANT:** Frankly speaking, you need not to carry this burden. Let me tell you as
24 Chief Justice, I have two matters nine judge bench matters, then I have 21 seven judge matters
25 and my endeavour is that one by one all these matters should be cleared. So what would be the
26 outcome that's a different issue.

27 **CHANDER UDAY SINGH:** So, let me just outline that in a moment...

28 **CJI SURYA KANT:** Because of the larger benches some matters in the High Courts are
29 pending, in District Courts are pending. So, this pendency here, a reference to a question of
30 law whatever may be the answer, we are not concerned about that.

31 **CHANDER UDAY SINGH:** Quite so. Let me...

1 **CJI SURYA KANT:** [UNCLEAR].

2 **CHANDER UDAY SINGH:** In the normal... In the normal course there would be no
3 problem. Let me just outline it. The reason why I intervened before the matter began yesterday
4 was not the on a casual basis. I'll tell Your Lordships why. We have a judgment which has held
5 the field for 48 years. Basis, based on which a large number of matters have been decided,
6 have become final, have either been decided and attained absolute finality, or they have been
7 decided at various levels. For instance, Mr. Naphade and I oppose each other in the **Bombay**
8 **University** matter which are pending here. Now there since 1990 and I'll just take a moment
9 for this because it'll tell Your Lordships what is the practical difficulty. Since 1990, say 938
10 people were kept on casual basis with artificial breaks etc. 2017, the Industrial Court of
11 Maharashtra ruled that this is an unfair labour practice basis the evidence of the university, a
12 long oral evidence etc., where they admit completely that these are permanent posts, they're
13 doing permanent work etc. etc., that it's an unfair labour practice and directs them to be made
14 permanent. Single judge of Bombay High Court affirms, division bench of Bombay High Court
15 affirms, matter comes before Your Lordships, and because this question was pending this gets
16 tagged here. Now therefore... Mean time My Lords on 2nd of February 2026, the Act comes to
17 be repealed. Now and I'll show you Your Lordships Section 104 of the code, and Section 6 of
18 the General Clauses Act, and with the effect of that, Your Lordships will see that the effect is
19 that Your Lordships will now have to see any decision which Your Lordships given on repealed
20 statute will, number one, it will have to be prospective. Whatever... whatever interpretation
21 Your Lordships place will have to be prospective because you can't reopen matters which have
22 already been decided.

23 **CJI SURYA KANT:** I think let's not... let's start on merit. This issue, you leave to us. We have
24 applied in... 100 times in the past we applied Doctrine of Prospectivity where we found that..

25 **CHANDER UDAY SINGH:** But we have prospective in a repealed statute. There's a
26 difference.

27 **CJI SURYA KANT:** No question of repeal. Repeal is only in 2025. Your cause of action, your
28 adjudication is all prior thereto. If you find...

29 **CHANDER UDAY SINGH:** So just see Section 104.

30 **CJI SURYA KANT:** If you find that **Bangalore Water Supply** was correctly laid down,
31 there is no question of interference.

32 **CHANDER UDAY SINGH:** No question of interference.

33 **CJI SURYA KANT:** Only if you find that there is something wrong with their judgment, then
34 question of Prospectivity come. Then this doctrine has been 100 times applied by this court.

1 **CHANDER UDAY SINGH:** I see that, but it is applied in repealed statutes only in revenue
2 matters.

3 **CJI SURYA KANT:** If you want to argue against yourself then we can't stop you.

4 **CHANDER UDAY SINGH:** No, no, not at all, I'm not arguing against myself.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The question doesn't arise at all. Our
6 interpretation will apply to the cases which have arisen under the Industrial Disputes Act, and
7 it is we are redefining that.

8 **JUSTICE B.V. NAGARATHNA:** They are pending at whatever...

9 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** They are pending...

10 **JUSTICE B.V. NAGARATHNA:** Stage of the hierarchy.

11 **CHANDER UDAY SINGH:** Matters where evidence has already been led, matters have
12 been decided at certain levels it may be pending in the Supreme Court, it may not have attained
13 finality, but look at the consequence of... suppose the court were to take a view that the whole
14 proceeding is without jurisdiction, do we set the clock back? Evidence led, judgments of courts,
15 etc., etc., will Your Lordships set the clock back? So, I'm saying... I'm only saying I'm drawing
16 Your Lordships attention to Section 104 of the Code, which is the repealing provision and
17 Section 6. I'll just place it, I'm not...

18 **CJI SURYA KANT:** Your last argument is based purely on equitable principles.

19 **CHANDER UDAY SINGH:** So, now... now let me come...

20 **CJI SURYA KANT:** If we take a view contrary to *Bangalore Water Supply*, in that event
21 we should follow the Doctrine of Prospectivity...

22 **CHANDER UDAY SINGH:** Yes, absolutely.

23 **CJI SURYA KANT:** Because the works, the reliefs, the benefit for decades the labourer, the
24 workers have got it, we should not take away.

25 **CHANDER UDAY SINGH:** I'll withhold that. I'll come...

26 **CJI SURYA KANT:** That argument we already taken note. Now...

27 **CHANDER UDAY SINGH:** Let me come to it at the end. Now let me come to the... the first
28 reason why Your Lordships ought not to re-examine *Bangalore Water Supply and*
29 *Sewerage Board*. Now, Your Lordship, we did a search. My instructing Counsel, I must say
30 with great diligence have done a search of the Supreme Court cases, and my written
31 submission, my written note My Lords may just note in Volume II, pages 1 to 22 is the note.

1 **CJI SURYA KANT:** 122?

2 **CHANDER UDAY SINGH:** No. Page 1 to page 22. Page 1 is the note My Lord may take it.
3 Volume II, page 1.

4 **CJI SURYA KANT:** Yes, got it.

5 **CHANDER UDAY SINGH:** Now at page 4, para 5, and I'll just point this out to Your
6 Lordships.

7 **CJI SURYA KANT:** "According to an SCC search..."

8 **CHANDER UDAY SINGH:** Yes. "According to an SCC search", My Lords have that?
9 "According to an SCC search for *Bangalore Water Supply* and *Rajappa*, the judgement
10 had been cited in at least 84 Supreme Court cases and at least 898 High Court cases, including
11 all High Courts except *Jammu and Kashmir*. At least 31 judgement..." now, this is the
12 Supreme Court.... "At least 31 judgments clearly follow or approve of *BWSSB* in a Labour Law
13 Context. Another 20 approval of it in the context of principles of statutory interpretation." May
14 I just pause here. So, 51 out of 84 follow it and approve of it either in the Labour Law situation
15 or on statutory interpretation, My Lords. "Only five appear to question *BWSSB*. Of these,
16 One, *Bombay Telephone* has been overruled."

17 **CJI SURYA KANT:** Yes.

18 **CHANDER UDAY SINGH:** "One *Coir Board* made a reference for reconsideration which
19 was later refused." *Coir Board*, was My Lord her Ladyship Justice Sujata Manohar's order
20 which the three-judge bench said that there is no case for reference. "Two are the orders passed
21 in the present proceedings." That is My Lords, the *Jai Bir Singh* proceeding. And the last
22 Physical Research Laboratory only seems to apply *BWSSB* incorrectly and notes that
23 *BWSSB* is not exhaustive on the question of sovereign functions. "Another ten distinguished
24 *BWSSB* and the remaining 18 either cite or refer to *BWSSB* in varying context but do not
25 materially engage with the judgment." I checked the ten with distinguished are not on merits,
26 but distinguished thing is not applicable to the argument which is being advanced in those
27 particular cases. So, 84 times the Supreme Court engages with this judgment, 51 times My
28 Lord, cites it with approval I'm just placing this in this 48-year period. This is the actual My
29 Lords, the sort of proof of the pudding, so to speak, because we hear a lot of doubts which are
30 voiced about how it has worked, some deleterious consequences and so on and so forth. This
31 is the actual record for the last 48 years.

32 Now My Lords, the main... there are four grounds My Lords, which are urged in the five judges
33 bench. My Lord, I think His Lordship Justice Dharmadhikari, speaking for the bench, gives
34 five... My Lords, four main grounds and My Lords we've engaged with those specifically in this

1 note, My Lord. So, the first reason if Your Lordship sees page 1 of my note, it just summarizes
2 those four points, but I'll straightaway go to the reasons themselves, My Lord. The first reason
3 is that **Bangalore Water Supply** inhibited Parliament or the Executive from enacting or
4 notifying an amendment to Section 2(j) or bringing a more expansive or more restrictive
5 definition to demonstrably... this is demonstrably wrong as a matter of fact. In fact, in 1982
6 Your Lordships are aware, Amendment Act, Hospital Act was enacted, etc. But when the
7 Parliament found that there was great opposition to having separate laws...

8 **CJI SURYA KANT:** You can ignore this. Because '82 Amendment was after this, they didn't
9 notify it and...

10 **CHANDER UDAY SINGH:** And now the 2020. So, that is the first reason. The second
11 reason is that **Bangalore Water Supply** was confined only to confined only such sovereign
12 functions outside the purview of industry, which can be termed strictly as constitutional
13 functions of the three wings of the state that is Executive, Legislature and Judiciary. Now, this
14 My Lords, in my humble submission; **Bangalore Water Supply** actually has fell from my
15 Lord Honourable Justice Narasimha, actually narrows down the scope of the plain words of
16 Section 2(j). 2(j) has no... My Lord, intrinsic curve in it against sovereign... covering sovereign
17 functions. The Supreme Court finding that there might be certain areas which should be sort
18 of no-go areas where the functions of that particular undertaking would be such that they
19 ought to be kept outside the sphere of My Lords court interventions or certain protections to
20 the workers, etc., etc. It is a narrowing down which was done by the court in **Bangalore**
21 **Water Supply**. But what is important here is that the sovereign function test, **Bangalore**
22 **Water Supply** actually enlarges what is available for sovereign functions from
23 **Superintendent vs. Legal Remembrancer**, which were nine-judge's bench. And I want
24 to take Your Lordships to that judgment but before going further, let me straightaway take My
25 Lords to **Superintendent vs. Legal Remembrancer**. Your Lordships will find that
26 judgment was is in Volume V(A).

27 **CJI SURYA KANT:** The serial number?

28 **CHANDER UDAY SINGH:** My Lords, This is Volume V(A), page 1426, 5A, page 1426. It is
29 PDF 1439, page 1426. Serial no. 57 I'm told, in the Index of Volume V(A).

30 **CJI SURYA KANT:** Nine judge?

31 **CHANDER UDAY SINGH:** Nine judges. So My Lords, the first para may just be read, Chief
32 Justice Subbarao speaking for the bench. This full bench.... May I read that My Lord?

33 **CJI SURYA KANT:** Yes.

1 **CHANDER UDAY SINGH:** "This full bench of nine judges have been constituted to
2 consider the correctness of the decision of this court in *Director of Rationing and*
3 *Distribution vs the Corporation of Calcutta*. The relevant facts are set out, but basically
4 what happened was, a penalty was imposed for violation of municipal licensing laws against
5 the municipality. And the issue was that, can the sovereign be levied penalty under a state law.
6 And that is set out in para 2. Now if Your Lordships are kind enough, straight away...

7 **CJI SURYA KANT:** Para 3, two questions, arguments.

8 **CHANDER UDAY SINGH:** Yes, the two, para 3, I'm grateful to Your Lordships. "Learned
9 Advocate General of West Bengal raised before us the following points. One, the state is not
10 bound by the provisions of a statute unless it is expressly named or brought in by necessary
11 implication. Two, the said principle equally applies to sovereign and non-sovereign activities
12 of a state. And Mr. N.S. Bindra, Learned Counsel appearing for the Attorney General raised
13 before us the third point, namely, this court has no power under the Constitution to review its
14 earlier judgment. If My Lords come to para 9... I must clarify, Learned Chief Justice Subbarao
15 speaking for seven judges in this judgment. There's one concurring opinion and one dissenting
16 opinion. Justice J. C. Shah dissents and the concurring opinion of Justice Bachhawat at the
17 end. My Lords, para 9. Sorry, may I read para 8 at page 1430. Frankfurter J said to the same
18 effect... this is after setting out *Basham, Iyengar and Municipal Commissioner* for the
19 City of Madras *after* that para 8 Frankfurter J said to the same effect in *United States vs*
20 *United Mine Workers of America* at best this canon, "like our other generalities about
21 statutory construction, is not a rule of law, whatever persuasiveness it may have in construing
22 a particular statute derives from the subject matter and the terms of the enactment in its total
23 environment. Even in England this rule of interpretation has not been treated as inflexible; it
24 is gradually losing ground in many branches of law. The incongruity of the rule of
25 discrimination in favour of the Crown, was pointed out by Glanville Williams in his treatise on
26 Crown Proceedings. The rule originated in the Middle Ages when it perhaps had some
27 justification. Its survival, however, is due to little but the *vis inertiae*, the author continues at
28 page 54 with a great extension in the activities of the state and the number of servants
29 employed by it, and with the modern idea expressed in the Crown Proceedings Act, compare
30 in this connection Article 300 of our Constitution that the state should be accountable in wide
31 measure to the law. The presumption should be that a statute binds the Crown rather than
32 that it does not."

33 "The next question is how far and to what extent the Common Law of England relating to the
34 prerogatives of the Crown has been accepted as the law of our country. Nothing has been
35 placed before us to show that the entire body of the common law pertaining to prerogatives
36 was accepted as the law throughout India. India at the relevant time comprised provinces and

1 native states as Bhashyam Aiyangar J pointed out in ***Bell vs. Municipal Commissioners***
2 ***for the City of Madras*** the prerogatives of the Crown in India, a country in which the title
3 of the British Crown is of a very mixed character, may vary in different provinces as also in the
4 presidency towns as distinguished from the *Mofussil*. The determination with anything like
5 legal precision of all the prerogatives of the British Crown in India is by no means an easy task.
6 It is well known that the common law of England was applied as such in the original size of the
7 High Courts of Calcutta, Bombay and Madras, and that in the *Mofussil* courts, the principles
8 embodied in the common law were invoked in appropriate cases on the ground of justice,
9 equity and good conscience. It cannot therefore be posited that either the entire body of
10 common law of England relating to prerogatives of the King or even the rule of construction
11 as forming part of the common law was accepted as law in every part of the country. It has to
12 be established whenever a question arises as to what part of the common law was accepted as
13 a law in a particular part." Para 16.

14 **CJI SURYA KANT:** 7 or 8 lines of para 19 in the last will throw some light. Rest is all
15 reference to the UK law.

16 **CHANDER UDAY SINGH:** Para 16 may be seen because Your Lordship said that wherever
17 exemptions are to be granted they were expressly granted.

18 **CJI SURYA KANT:** What you want to argue is partly summed up in 7-8 lines of para 19.

19 **CHANDER UDAY SINGH:** 19, I'll come straight there.

20 **CJI SURYA KANT:** After that is US, UK and domestic law.

21 **CHANDER UDAY SINGH:** Yes, yes My Lords. After...

22 **CJI SURYA KANT:** You can start, "The same rule was again..."

23 **CHANDER UDAY SINGH:** "The same rule.." at page 1436, the second part, "The same rule
24 was again restated in ***United States of America vs. Reginald Vitek***. The question there
25 was whether the District of Columbia Emergency Rent Act did not apply to government owned
26 defence houses in the district such as Bellevue Houses. The court relied not only upon the said
27 rule of construction but also on other circumstances in support of the conclusion that the
28 United States was exempt from the operation of that Act by necessary implication. In ***Just***
29 ***Larsen*** etc. the purchaser of surplus coal from the War Assets Administration filed a suit
30 against the said administration for an injunction prohibiting the latter from selling or
31 delivering coal to any other person. The suit was dismissed on the ground that the sovereign
32 immunity in suits for injunction or for specific performance was based upon public policy, but
33 it was argued that the principle of sovereign immunity was an archaic hangover, not consonant
34 with modern morality. The majority conceded that there was substance in such a viewpoint as

1 applied to suits for damages. Mr. Justice Frankfurter in his dissent went further and pointed
2 out that the Doctrine of Sovereign Immunity was in disfavour. The American decision,
3 therefore, were mainly based either on the provisions of the Constitution of the state or on the
4 ground of public policy evolved by the courts. The Founding Fathers carried with them the
5 English doctrine of the Crown prerogative, and it continued to influence some of the principles
6 of public policy evolved in that country. Even so, the decision made it clear that the rule of
7 construction was relied upon only as one of the guides to arrive at the intention of a particular
8 statute. That apart, the fact that the common law of England pertaining to prerogatives
9 influenced some of the decisions of the Supreme Court of the United States cannot help us in
10 coming to a conclusion whether the said rule has become part of the law in India".

11 And then paragraph 22. Their Your Lordships now say, "Let us now proceed on the assumption
12 that it has been accepted as a rule of construction throughout India. This leads us to the
13 question whether the said rule of Construction is the law of the land after the Constitution
14 came into force. Under Article 372, all the laws in force in the territory of India immediately
15 before the commencement of the Constitution shall continue in force therein until altered or
16 repealed or amended by competent Legislature".

17 My Lords, can I come straight to the last five lines on this page? "But it is not possible to hold..."
18 because I'll just skip over, "But it is not possible to hold that a mere rule of construction
19 adopted by English courts and also by some Indian courts to ascertain the intention of the
20 legislature was a law enforced within the meaning of this term. There is an essential distinction
21 between a law and a canon of construction. This distinction between the law and canon of
22 construction has been noticed by us earlier, and we have held that the canon of construction
23 is not a rule of law. We are not concerned here with statutory rules of interpretation. We are
24 therefore of the opinion that a rule of construction is not a law enforced within the meaning of
25 Article 372".

26 Then there Your Lordships dealt with the Privy Council on para 24, My Lords may straight
27 away come. "There is therefore no justification for this court to accept the English canon of
28 construction, for it brings about diverse results and conflicting decisions. On the other hand,
29 the normal construction namely that the General Act applies to citizens as well as to the state
30 unless it expressly or by necessary implication exempts the state from its operation, steers
31 clear of all the said anomalies". May I just repeat that? "The general law applies equally to
32 citizens and to the state unless it expressly or by necessary implication exempts the state from
33 its operation. This would steer clear of all the said anomaly, that *prima facie* applies to all
34 states and subjects alike; a construction consistent with the philosophy of equality enshrined
35 in our Constitution. This natural approach avoids the archaic rule and moves with the modern
36 trend. This will not cause any hardship to the state. The state can make an act if it chooses,

1 providing for its exemption from its operation. Though the state is not expressly exempted
2 from the operation of an act, under certain circumstances such an exemption may necessarily
3 be implied", which is what Justice Krishna Iyer has done. He has found an implied exemption
4 for that narrow part of inalienable sovereign function. "We therefore, hold that the said canon
5 of construction was not the law in force within the meaning of 372. In this view it is not
6 necessary to express our opinion on the question of whether the aforesaid rule of construction
7 would not apply to the trade activities of the state, even if it applied to sovereign activities."
8 And then at para 30, I think we can skip over that.

9 **CJI SURYA KANT:** That's good enough for...

10 **CHANDER UDAY SINGH:** And the concurring opinion is set out at paragraphs 54, 55, 56.
11 That is Justice Bachhawat's opinion. Very brief opinion My Lords, it's at the end of this
12 paragraph 54 to 56. Yes, so this was the nine-judges' bench which takes a view which though
13 it was not in the context of Industrial Disputes Act or law, but the view here, the view in
14 *Safdarjung Hospital* is directly contrary to this. *Safdarjung Hospital* says basically, if
15 it's a private hospital, it's an industry. If it's a government hospital, it's not an industry. Just
16 on the basis, on the footing, that if it is set up by the government, it stands outside. It goes on
17 the on the assumption of a sovereign immunity.

18 **CJI SURYA KANT:** Yes, you can continue. Your four points you can.

19 **CHANDER UDAY SINGH:** No, on this aspect where I want to point out so this was the
20 second aspect of the reason why the five-judges bench says that this *Bangalore Water*
21 *Supply* needs to be re-examined. There are two more points, My Lord. I can continue
22 tomorrow if Your Lordships...

23 **CJI SURYA KANT:** See, we have time constraints because... That's why we allocated time
24 and we have requested now to Amicus we need to give some time to this. So, please, we'll
25 request you that if you can wind up.

26 **CHANDER UDAY SINGH:** I'll need a little bit of time because there are two more. Apart
27 from this I need to show Your Lordships on the act itself. Because nobody has shown Your
28 Lordship. There are very general statements have been made that there are many protections
29 available. Now, for instance, my learned friend Mr. Shadan Farasat said in his note for *State*
30 *of Punjab* that there are Shops and Establishments Act, West Bengal Act, Delhi Act, etc. Now
31 I, I need to just give Your Lordships a bit of outline here. Industrial Law in India has many
32 facets to it. The law dealing with the employer-employee relationship, that is...

1 **CJI SURYA KANT:** Other statutes can't cast any shadow on the ID Act. I think that we are
2 very clear about it. Whether it grants big relief or it grants small, whatever it grants, it grants.
3 The only question is that we are only trying to identify who are entitled to that protection.

4 **CHANDER UDAY SINGH:** Yes, yes.

5 **CJI SURYA KANT:** So, what kind of protection it grants. I think that...

6 **CHANDER UDAY SINGH:** No, no, not that, not that. But I need to take Your Lordships to
7 the ID Act and also show that what the ID Act provides for is not available under state laws.
8 But what the... Say the Factories Act for instance, which is a which is a Federal Law. The
9 Factories Act provides for safety and health primarily working hours, safety and health
10 because there was a they came from a particular...

11 **CJI SURYA KANT:** Minimum Wages Act to only to provide minimum wage.

12 **CHANDER UDAY SINGH:** Minimum wages. Payment of Wages Act provides for the mode
13 of payment of wages.

14 **CJI SURYA KANT:** That we understand.

15 **CHANDER UDAY SINGH:** But suppose I'm not paid wages. I can file a complaint and I can
16 get my wages, but if I'm not paid wages and I claim wages and I'm sacked. Because I claimed
17 the wages, I can't get my job back under the Payment of Wages Act.

18 **CJI SURYA KANT:** Just now Madam Indira argued that we were explaining at that time
19 11A, power of 11A.

20 **CHANDER UDAY SINGH:** Yes.

21 **CJI SURYA KANT:** This power is not available any under any other statute.

22 **CHANDER UDAY SINGH:** That's right.

23 **CJI SURYA KANT:** That is only specific to the statute.

24 **CHANDER UDAY SINGH:** That's right.

25 **CJI SURYA KANT:** Like power to go on strike, power to declare lockout. All these are of
26 course subject to conditions like industrial establishment conditions are different. In the case
27 of industrial public utility the conditions are different. Section 22, Section 23.

28 **CHANDER UDAY SINGH:** No, so the for the coverage of industry I just need to show Your
29 Lordships My Lords, the Act itself. Because as rightly posited by My Lord Justice Datta, that
30 when you, even if you're looking at an interpretation clause, you don't, you cannot look at the

1 clause alone. You have to look at it in the context of the Act. So, now let me let me place the
2 act before Your Lordships.

3 **CJI SURYA KANT:** ... said that you have to see the entire statutory scheme.

4 **CHANDER UDAY SINGH:** That's right. So, let me... there are there are two more points on
5 this on this reference order which I'll show Your Lordship.

6 **CJI SURYA KANT:** Yes.

7 **CHANDER UDAY SINGH:** Let me first place the Act, My Lords. Now if Your Lordship come
8 to the Industrial Disputes Act for a moment in Volume 4, page 53 in Volume 4, My Lords. I
9 think if Your Lordship could take the bare Act, it would be better, because that is what has
10 been put there.

11 **CJI SURYA KANT:** Okay, 40 minutes-45 minutes, because we have to hear to learned
12 amicus.

13 **CHANDER UDAY SINGH:** I would need half an hour.

14 **CJI SURYA KANT:** What about your colleagues?

15 **CHANDER UDAY SINGH:** No, the question is that ultimately...

16 **CJI SURYA KANT:** Ten minutes each, that's all.

17 **CHANDER UDAY SINGH:** My difficulty is not that I ultimately I have to place before Your
18 Lordships 4 or 5 issues which are very important. I can only say this that I would not repeat
19 anything, but it's an important question. Ultimately if the...

20 **CJI SURYA KANT:** ... you want to point out we know very well the very scheme of the Act.

21 **CHANDER UDAY SINGH:** Yes, so kindly come to the Act.

22 **CJI SURYA KANT:** Yes.

23 **CHANDER UDAY SINGH:** If Your Lordships are kind enough, just to see the Industrial
24 Disputes Act.

25 **CJI SURYA KANT:** Yes, Mr. Singh, what do you want to point out in the Act?

26 **CHANDER UDAY SINGH:** Yes. So, if I My Lords will first need to see the definitions. First
27 please see the definition in 2(g), of "Employer".

28 **CJI SURYA KANT:** Yes.

1 **CHANDER UDAY SINGH:** I'll come back later to 2(a) with regard to appropriate
2 government, but please see, the just for definitions are very important to be seen in
3 conjunction; 2(g), 2(j), 2(k) and 2(n); these need to be seen in conjunction. So, 2(g), "Employer
4 means, in relation to an industry carried on by or under the authority of any department of the
5 Central Government or a State Government, the authority prescribed in this behalf or where
6 no authority is prescribed, the head of the department. In relation to an industry carried on by
7 or on behalf of a local authority, the Chief Executive Officer of that authority." That's the end
8 of the definition.

9 **CJI SURYA KANT:** Yes.

10 **CHANDER UDAY SINGH:** So, "Employer" means, an employer in relation to departments
11 of government and local authority. Private sector employer is not defined here because it is
12 taken in common parlance that who is the employer is known. Now there is a reason, I'm
13 pointing this out. For anybody to even attempt to argue or to argue that the government is
14 exempt as was done and as was held by a learned six judges bench in *Safdarjung*, in the
15 teeth of a definition which says which only applies to government and only applies to
16 municipal corporations. If you take the normal interpretation that means is exhaustive, the
17 solitary...

18 **CJI SURYA KANT:** That makes...

19 **CHANDER UDAY SINGH:** That means the private sector employer is not an employer at
20 all, if you were to take that literal rule of interpretation. Now 2(g) now you kindly come to 2(j)
21 the government.

22 **JUSTICE DIPANKAR DATTA:** Department of the government.

23 **CHANDER UDAY SINGH:** Any department of the government. Yeah, yeah now come to
24 2(j), My Lordships have seen industry...

25 **JUSTICE B.V. NAGARATHNA:** Whether it is central or whether...

26 **JUSTICE DIPANKAR DATTA:** That is the distinction, central or state, for that appropriate
27 government now come

28 **JUSTICE B.V. NAGARATHNA:** With regard to an industry. There again we come back to
29 that very same question

30 **CHANDER UDAY SINGH:** No industry carried on by or under the authority of so if it

31 **JUSTICE B.V. NAGARATHNA:** Central Government or State Government?

1 **CHANDER UDAY SINGH:** State Government or Central Government. If the industry is
2 carried on by or under the their authority, then who is the employer is defined. And in relation
3 to any industry carried on by or on behalf of a local authority. So, all your sewerage this that
4 et cetera, et cetera that is why *Bangalore Water Supply and Sewerage Board*, etc.

5 Then Industry. 2(j). Industry means any systematic activity carried on by cooperation between
6 an employer and his workmen, whether such workmen are employed by such employer
7 directly or by or through any agency, including a contractor for the production, supply or
8 distribution of goods or services with a view to satisfy human wants or wishes not being wants
9 or wishes...

10 **JUSTICE DIPANKAR DATTA:** You're reading the 1980 Amendment.

11 **CHANDER UDAY SINGH:** Sorry, my Learned friend has handed me the wrong statute.
12 Sorry "Industry"... The original definition, "Industry means any business, trade, undertaking,
13 manufacture or calling of employers and includes any calling, service, employment, handicraft
14 or industrial occupation or avocation of workmen". Now "Industrial dispute" in two cases,
15 "Industrial dispute means any dispute or difference between employers and employers, or
16 between employers and workmen, or between workmen and workmen, which is connected
17 with the employment, or non- employment, or terms of employment, or with the conditions
18 of labour of any person".

19 Then industrial establishment or undertaking was defined later on by an amendment in
20 2(k)(a). In the 1982 amendment this was enacted. This was brought into force, the definition
21 of industry was not brought into force. And this 2(k)(a) takes into account situations where
22 there's an undertaking, part of which is an industry and part of which is not an industry, and
23 a dominant purpose test would apply as to whether the whole is an industry or not in 2(k)(a).
24 Then kindly come to 2(n) which my learned friend, Ms. Jaisingh showed Your Lordship. But
25 read 2(n) with 2(g), the definition of 'Employer' in 2(g) and 2(n). 2(n) says "Public utility
26 service means any railway service, or any transport service for the carriage of passenger or
27 goods by air, any service in or in connection with the working of any major port or dock, any
28 section of an industrial establishment on the working of which the safety of establishment or
29 the workmen employed therein depends, any postal, telegraph or telephone service, any
30 industry which supplies power, light or water to the public, any system of public conservancy
31 or sanitation, any industry specified in the First Schedule with the appropriate government
32 may, if satisfied that public emergency of public interest so requires by notification in the
33 Official Gazette, declare to be a public utility service for the purposes of this Act, for such
34 period as may be specified in the notification". Now in 2(n), my learned friend Ms. Jaisingh,
35 showed Your Lordships that all kinds of industries, all kinds of industries which are...

1 including those which are sort of run "by the sovereign" are included either... either in the
2 original schedule or by amendment brought in by the government.

3 **CJI SURYA KANT:** That we have already taken note of that.

4 **CHANDER UDAY SINGH:** But the reason for this is that please see Section 22. See the
5 enormity of that argument. Section 22 says that if there is a notice of strike in a public utility
6 service, then under Section 12 the Conciliation Officer shall immediately admit it in
7 conciliation. In all other cases, if there is a notice of strike in a non-public utility service, he
8 may admit it in conciliation.

9 **CJI SURYA KANT:** Exactly.

10 **CHANDER UDAY SINGH:** Now why he shall admitted in conciliation because Section...
11 the scheme of 22, 23 and 24 is that the moment it is admitted in conciliation the strike becomes
12 illegal and it is banned; so, you cannot embark. So, when a strike notice is issued in a public
13 utility service on the issuance of the notice, it gets admitted he shall admit it under Section 12
14 in conciliation. And this is something to serve the nation, this is something to protect the
15 nation because public utility services are seen as essential services, services which I have to do
16 with...

17 **CJI SURYA KANT:** This you have already pointed out, that is the [UNCLEAR].

18 **CHANDER UDAY SINGH:** But look at the... look at that not in... not as a definition, not as
19 a cold... just as a cold list, but what is the purpose of that ? The purpose is Section 22, 23, 24
20 read with Section 12. Purpose is to avert the possibility of disruption of services in the country.
21 So, which is why the... we need to look at this act as a whole, and then in that context, when
22 Justice Krishna Iyer and the other judges... and I am going to show Your Lordships that it is
23 not a five judge majority; it is a unanimous judgment of seven judges, there is no dissent. I'm
24 going to show that to Your Lordships.

25 **JUSTICE DIPANKAR DATTA:** They have a power of bargaining which will not be available
26 if they are taken out of the purview of the Act.

27 **CHANDER UDAY SINGH:** They have the power bargaining and they have an umbrella
28 under which with a peace and quiet they can bargain without disrupting the nation. So they
29 are bargaining with a sort of an umbrella of the state overseeing the sort of... the state becomes
30 like the United Nations, and instead of going to war immediately and dumping bombs on some
31 country, you first have to go to the United Nations, which tells you, sorry, you can't start
32 throwing your bombs on the Employer, first you have to sit with the Employer in conciliation;
33 where it's a public utility service. So, there is a whole scheme in this.

- 1 **CJI SURYA KANT:** We understand well. What will be your next argument?
- 2 **CHANDER UDAY SINGH:** So, as far as...
- 3 **CJI SURYA KANT:** We understand this scheme of the Act.
- 4 **CHANDER UDAY SINGH:** Now, so now, My Lords, the next aspect My Lords, which is
5 there let me straight away take Your Lordship to that which I consider very crucial here.
6 Because the whole in *Jai Bir Singh* the learned five-judge bench goes on a basis by sort of
7 trying to see casting a doubt on the formulation and the and the manner in which a judgment
8 was delivered, and saying that because three judges said this, one judge said that, somebody
9 wrote... So, I want to show Your Lordships straightaway, this is a unanimous judgment
10 because please see what is the dissent.
- 11 **CJI SURYA KANT:** You can clarify that's why we persuaded Madam Indira also, need not to
12 address on this issue of maintainability etc.
- 13 **CHANDER UDAY SINGH:** No, not on maintainability. I'm on the need for another...
- 14 **CJI SURYA KANT:** That probably that the judgment is not by five into two, it is a seven-
15 judge unanimous judgment.
- 16 **CHANDER UDAY SINGH:** Yes.
- 17 **CJI SURYA KANT:** For that you are referring to para 185 this is Justice Jaswant Singh
18 judgment where His Lordship says rest of the issue not, only doubtful area...
- 19 **CHANDER UDAY SINGH:** No. Let me just formulate. Let me formulate it without even
20 troubling Your Lordships to open the judgement. Now, on 21st of February 1978 or 22nd
21 February 1978, My Lords, seven learned judges sit in this Honourable Court, and My Lords
22 pronounce a judgment in open court as per 145; Article 145 of the Constitution. In the
23 pronouncement My Lords, there are two judgments which are... two opinions which are fully
24 formulated opinions which are pronounced. One is Honourable Justice Krishna Iyer speaking
25 for himself and two other judges. So, three out of seven judges, there's one opinion which is
26 Justice Krishna Iyer's opinion. Chief Justice Beg's opinion which I'll show Your Lordship is
27 absolutely in concurrence on every single material aspect and says so and including in the
28 opinion. Though he says that I wish I had more time to elaborate more on certain aspects, that
29 is his fervent desire that had I had more time, had I not been hanging up my shoes tomorrow,
30 so to speak.
- 31 **CJI SURYA KANT:** Robes.

1 **CHANDER UDAY SINGH:** Hanging up my robes tomorrow... in the army they say hanging
2 up the boots. So, hanging up my robes tomorrow His Lordship it was just a fervent desire
3 which His Lordship is expressing. But fully concurring opinion delivered by the fourth learned
4 judge,

5 **CJI SURYA KANT:** So that's why it is now...

6 **CHANDER UDAY SINGH:** Now Justice Chandrachud's opinion is also pronounced or at
7 that time along with the other seven-judges speaking for himself and Honourable Justice
8 Jaswant Singh and Honourable Justice Tulzapurkar, where he says we concur with the
9 opinion.

10 **CJI SURYA KANT:** Yes, we have read that paragraph and we [UNCLEAR].

11 **CHANDER UDAY SINGH:** No and the important the important thing we agree

12 **CJI SURYA KANT:** We remember everything we can tell you on tips, 21st February 1978 is
13 that pronouncement. It is para 21 and 22, judgment comes ultimately in April by some...
14 understandable.

15 **CHANDER UDAY SINGH:** Not that I'm saying what I'm saying is, is something slightly
16 important. What I'm saying is they say that we agree that the appeal of *Bangalore Water*
17 *Supply and Sewerage Board* should be dismissed. Now, when you agree that the appeal
18 should be dismissed, it is not a dissent. We will express our concurrence and divergence of
19 opinion...

20 **CJI SURYA KANT:** Later.

21 **CHANDER UDAY SINGH:** But we agree that the appeal will be dismissed. That is a
22 concurrence. A dissent is where you disagree on the outcome. Just because I have some
23 reasons now every day you have Your Lordships have judgments of two, three, four, five judges
24 where one learned judge says on a particular aspect, one learned judge may not fully agree
25 with the other learned judges, but they agree in the outcome, but they say that look on so and
26 so aspect I have some reservations, I have my own views.

27 **CJI SURYA KANT:** That's why [UNCLEAR] on this argument that's why we are accepting
28 what you say because that issue doesn't make any difference so don't record like this.

29 **CHANDER UDAY SINGH:** So, it is it is absolutely and completely a judgment of seven
30 learned judges concurring judgment, there's no dissent at all that's what I want to... And when
31 you read Justice Jaswant Singh's are opinion. Justice Chandrachud's opinion in fact, which
32 the additional concurring views which he expresses on 21st April go even further than Justice
33 Krishna Iyer's. In my humble submission, His Lordship formulates his opinion in even

1 stronger terms perhaps than what Justice Krishna Iyer had done. So, we have five learned
2 judges at least and two learned judges who say we agree even in the final judgment again,
3 Justice Jaswant Singh says we agree that ***Bangalore Water Supply's*** appeal has to be
4 dismissed. So, on that aspect, the five judges when the five learned judges say that this matter
5 should be referred, I submit that, they are patently wrong, in saying that two judges didn't say
6 this and two judges said something later and they didn't have access to... So because... Chief
7 Justice Beg didn't get to read what Justice Jaswant Singh or Justice Tulzapurkar...

8 **CJI SURYA KANT:** You can't name the judges by name...

9 **CHANDER UDAY SINGH:** That means nothing at all. And now My Lord, the most
10 important thing is that in the... Your Lordships have time and again looked at the issue of
11 when, when do we let's overrule or disagree or re-examine a judgment which has held the field
12 for a long time because we are in a larger bench. Now in the nine judge's bench judgment in
13 ***SCAORA*** that is the ***NJAC*** judgment and I.... it's on record before Your Lordships and I'll
14 take My Lords through. That that is very important, I need to take Your Lordship through 3 or
15 4 of the opinions there. There Lordships were invited by the Attorney General, by various other
16 parties to that the Second Judges Case has been wrongly decided and that must be referred to
17 a larger bench. And they said that the Third Judge's Case did not go into the whole thing, the
18 third judge's case merely proceeded on the basis that the second judge's case was rightly
19 decided and therefore the matter must be referred to a larger bench. Justice Khehar, Justice
20 Madan Lokur, Justice A. K. Goyal, Justice Kurien Joseph and I think one of the other learned
21 judges have gone into this aspect of whether it can be referred at all and they say in what
22 circumstances should we agree, should the Supreme Court consider re-examination of a
23 judgment which has held the field for some time, etc., etc.

24 **CJI SURYA KANT:** Unfortunately has gone... because reference is already made so that issue
25 that argument will not entertain now.

26 **CHANDER UDAY SINGH:** No, I'm...

27 **CJI SURYA KANT:** On merit if you want to say something...

28 **CHANDER UDAY SINGH:** No, that's not that... that's not on the reference, that's on what
29 the question is, once it's referred also in what circumstances should Your Lordships re-
30 examine it and differ with it and Their Lordships have not... so may I just place those... those
31 that judgment before Your Lordships?

32 **JUSTICE B.V. NAGARATHNA:** There is a reference here there is a reference...

33 **CHANDER UDAY SINGH:** I'm sorry My Lords?

1 **JUSTICE B.V. NAGARATHNA:** Now, there is already a reference made...

2 **CHANDER UDAY SINGH:** Yeah I'm not... I'm saying today Your Lordships are being asked
3 to re-examine and to defer with I'm saying on the on the principle of...

4 **CJI SURYA KANT:** Supreme Court rules please ,see there is as far as Chief Justice of India
5 is concerned, the Chief Justice of Supreme Court is concerned, even without the precedent
6 that you have to refer 3 to 5, 5 to 7, Chief Justice is not being bound by that rule. There is an
7 absolute power given under the rule that Chief Justice's prerogative.

8 **CHANDER UDAY SINGH:** I appreciate that.

9 **CJI SURYA KANT:** That order, by seven judge bench was presided over by Chief Justice...
10 Chief Justice of India.

11 **CHANDER UDAY SINGH:** I'm sorry I...

12 **CJI SURYA KANT:** So, that is over now.

13 **CHANDER UDAY SINGH:** I'm sorry I...

14 **CJI SURYA KANT:** Ultimately...

15 **CHANDER UDAY SINGH:** It's my fault I didn't make... I'm sorry I didn't make my point
16 clear My Lords. I'm not questioning now the reference before Your Lordships, I'm saying even
17 on a reference having been made, whether Your Lordship should differ with the judgment
18 which has held the field for 48 years on that while answering the reference.

19 **JUSTICE DIPANKAR DATTA:** Authority, under what circumstances, we can refuse to
20 answer the reference. Reference is made...

21 **CHANDER UDAY SINGH:** Yes.

22 **JUSTICE DIPANKAR DATTA:** Now show us an authority which says in these
23 circumstances the nine judge bench may not answer.

24 **CHANDER UDAY SINGH:** I'm not on not answering, I'm saying Your Lordship is having
25 one of the...

26 **JUSTICE DIPANKAR DATTA:** That was one of the contentions of Madam Jaisingh.

27 **CHANDER UDAY SINGH:** That was my contention also...

28 **JUSTICE DIPANKAR DATTA:** We should not, we should return the reference that that...

29 **CHANDER UDAY SINGH:** Was my contention also only on mine was primarily on the basis
30 that today we are dealing with the repealed statute. Any interpretation Your Lordships place

1 is going to be prospective. A prospective interpretation of a repealed statute is a rather
2 anomalous sort of situation. We do it in revenue laws, we do it in revenue laws because revenue
3 has to be collected, but other than in revenue laws, I have never heard of...

4 **CJI SURYA KANT:** We have done in service law, please don't forget, the judgment the most
5 celebrated judgment of the... issuing show cause notice at the along with the inquiry report.

6 **CHANDER UDAY SINGH:** Ramzan Khan, no. I'm talking about...

7 **CJI SURYA KANT:** We can show you judgment in every field.

8 **CHANDER UDAY SINGH:** No, I'm talking about a repealed law. Your Lordships are being
9 asked to prospectively overrule a law which an interpretation in a law which is now repealed,
10 that's right, but I made that point, I'm not going to agitate it further.

11 **JUSTICE B.V. NAGARATHNA:** Whatever is going to be said now will apply to the existing
12 cases under the old law. That's the long and short of it.

13 **JUSTICE JOYMALYA BAGCHI:** Mr. Singh...

14 **CHANDER UDAY SINGH:** It that's the one I made my point there, I made my point I'm
15 not going to repeat that. I'm on the *NJAC* judgment, I want to draw your attention to it that
16 that even... even with the situation which you are faced with today, unless there is something
17 which Your Lordships find startlingly shocking in *Bangalore Water Supply*.

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Very different context because *NJAC*
19 the question was, there was a challenge and people have raised contentions that the judgment
20 earlier was not correctly decided. *NJAC* was constituted for the first time because the
21 constitutional amendment was challenged. So in that challenge they said the earlier precedent
22 is not correctly decided, please five judges can't hear it, post it before a larger bench. That's
23 how it arose.

24 **CHANDER UDAY SINGH:** No I'm sorry My Lords. I'm not on that. I'm saying in the... Your
25 Lordships in that judgment have examined the situation as to where... what are the
26 circumstances in which judgments which are... which have held the field for a long time should
27 be differed with by us. I'm only saying that there is no basis at all today for differing with it.
28 I'm saying the nine judge.... I'm... Your Lordship must opine, but I'm saying... I'm giving Your
29 Lordships a reason why you should opine in favour of upholding *Bangalore Water*
30 *Supply*.

31 **CJI SURYA KANT:** On merits you are well within your right to argue that there is nothing
32 new that you should prompt us to revisit the judgment. That's a different...

1 **CHANDER UDAY SINGH:** In that context I just want to place the opinion at certain
2 paragraph...

3 **CJI SURYA KANT:** There is no need of that please. Rest, we will give you 10 minutes
4 tomorrow to you, and 10-15 minutes to Gopal, and 10 minutes to Mr. Hansaria, and 10 minutes
5 to Madam and ten minutes to Kohli. That's all.

6 **CHANDER UDAY SINGH:** I'll take ten minutes.

7 **CJI SURYA KANT:** Please give us in writing everything.

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END OF DAY'S PROCEEDINGS