

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

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 897/2002

STATE OF U.P.

Petitioner(s)

VERSUS

JAI BIR SINGH

Respondent(s)

TRANSCRIPT OF HEARING

19-March-2026

Document Control

Document Name & Date	Transcript of Civil Appeal No. 897 of 2002 Hearing dated 19.03.2026
Status	Released
Version	1.0
Last Update	19.03.2026
Nature of Update	Original version
Release Date	19.03.2026
Document Owner	Supreme Court of India

10:30 AM IST

1 **CHANDER UDAY SINGH:** May I please, Your Lordships? If Your Lordships could take the
2 bare act of the Industrial Disputes Act. I'll be very brief.

3 **CJI SURYA KANT:** Yes.

4 **CHANDER UDAY SINGH:** Now I was on 2(n). 2, Subsection (n), which defines public
5 utility service...

6 **CJI SURYA KANT:** Yes.

7 **R. VENKATARAMANI:** Sorry, sorry. Two things I wanted to bring to Your Lords' attention.
8 I've been able to place my hands on the Reference Order just as I mentioned to it, we could
9 restore the old paper book and then I'll just place it before Your Lordships got copies of it and
10 give it to you. Thank you.

11 **CJI SURYA KANT:** Okay. Thank you, Mr. Attorney. Yes, Mr. Singh.

12 **R. VENKATARAMANI:** And then I, I thought nice to... nice to listen to the passionate and
13 well-meaning arguments on the other side. I would like to listen to some of them. They throw
14 some light good light on probably our Rejoinder. Just wanted to pay my compliments to my
15 learned friends.

16 **CHANDER UDAY SINGH:** Thank you. Very, very kind of the learned Attorney. Very
17 grateful. 2(n). Just see the scheme...

18 **R. VENKATARAMANI:** Oh I'm sorry. I'll just get a copy of the Referral Order.

19 **CHANDER UDAY SINGH:** Yes, very well. So the scheme of 2(n) is Public Utility Service
20 means any railway service, transport service, passage of goods by air, any service in or in
21 connection with the working of any major port or dock, any section of an industrial
22 establishment dealing with safety and establishment, any postal, telegraph or telephone
23 service, any industry which supplies power, light or water to the public, any system of public
24 conservancy or sanitation. So these first five entries were there right from the when the
25 Constituent Assembly approved the Act in 1947, when the Act was enacted. And, sixth was also
26 there. Any industry specified... at that time it was just 'the schedule'... First Schedule wasn't
27 there... "the schedule which the appropriate government may have satisfied that the public
28 emergency et cetera et cetera required." But while enacting it in 1947, five entries were
29 already... the Constituent Assembly already put in the first five entries in the schedule which
30 Your Lordships will find in the schedule. Those five entries were there from... by Legislative

1 action, not by appropriate government action. Just kindly come to the schedule for a moment.
2 I'll just make the point. If Your Lordships come to the, what is now the First Schedule... in
3 1956, the other schedules were added, so this became the First Schedule. In my book it's at
4 page 107. Your Lordships may I have it somewhere around there... at the foot of 107.

5 **CJI SURYA KANT:** It's 108, if you take it.

6 **CHANDER UDAY SINGH:** My Lord. Now, the First Schedule says...

7 **CJI SURYA KANT:** Transport banking, Civil court.

8 **CHANDER UDAY SINGH:** But see the title of the First Schedule. "Industries which may be
9 declared to be public utility service under Sub-clause (vi), of so-and-so." So, the definition is,
10 'industry'. Now, the first five; transport other than railways, because railways was already
11 there in (ii) and (i), banking, cement, coal, and cotton textiles were already there. Now,(vi),
12 (vii), (viii), (ix) and (x), were again brought in by Legislative fiat in the 1956 Amendment Act.
13 So, in the 1956 Amendment Act, when the... that is Act 36 of 1956, when the other schedules
14 were added and this became the First Schedule. Simultaneously, these five were added which
15 includes Your Lordships will see, Defence Establishment, service in hospitals and
16 dispensaries, fire brigades. The others, from 11 onwards, have been added by notifications
17 under 2(n)(vi). Right. So, the fact that Parliament in 1956 was cognizant of what is industry,
18 and has added these as industries, not just industries but industries which are public utility
19 services was there.

20 Now I pointed out to Your Lordships yesterday that under Section 12 the Conciliation Officer
21 is mandated to entertain conciliation, to admit in conciliation a notice of strike or lockout in a
22 public utility service. But what I missed was Section 20, Your Lordships may just take this.
23 Just note it down. Section 20 is a deeming provision which says "The moment a notice of strike
24 or lockout in a public utility service is received by the Conciliation Officer, it is deemed to be
25 admitted in conciliation." Section 22 then says, that "no strike or lockout will be commenced
26 in a public utility service without a notice of not less than 14 days and not more than six weeks
27 prior to the commencement." So in those 14 days it gets deemed to be in conciliation. And
28 consequently under Section 24, the strike or lockout becomes illegal if they still commence it
29 without the conciliation getting over. Because Section 20, 22, 24 is the scheme of how strikes
30 and lockouts are completely abated, completely prevented. Till now, Section 20's
31 commencement and conclusion of proceeding, the proceeding concludes when the
32 conciliation officer records failure, either he records the settlement or he records failure. On
33 failure, immediately the appropriate government makes a reference in public utility services.
34 And again there is a bar on strikes and lockouts till the conclusion of the reference. It is a
35 scheme which is, I'm surprised, not that State Governments want this scheme to be jettisoned

1 for certain classes of industries. When this is a scheme which is there to protect not just the
2 workers, we, of course, want the protection of workers, but to protect the industries, to protect
3 the employers, to protect the public at large and the nation as a whole. This is the sort of
4 scheme which is there with public utility services which include hospitals, which include
5 conservancy, which includes sanitation, which includes municipalities, universities, etc.

6 Now My Lords, kindly come to 2(a), because the assumption on the other side of the learned
7 ASGI Mr. Nataraj, my learned friend Mr. Shadan Farasat etc. arguing that Industries which
8 are run by the Government, Industries which are run for fulfilment of Directive Principles of
9 State Policy and so on and so forth, could never have been Industries.

10 Now please see what is the definition of "appropriate government." "Appropriate government
11 means in relation to any Industrial dispute concerning any Industry carried on by or under the
12 authority of the Central Government or Railway company or concerning any such controlled
13 industry." Controlled industries are under 2(ee). My Lord may just note it. 2(ee) is controlled,
14 they come under control only to preserve the Industry for public interest. So private Industries
15 become controlled under 2(ee) for the purpose of preservation of the Industry in public
16 interest.

17 Then overleaf, Your Lordship will see Employee State Insurance Corporation, Board of
18 Trustees under the Coal Mines Provident Fund Act, Central Board of Trustees and State
19 Boards under the Employees Provident Fund Act, Oil and Natural Gas. Now, these Board of
20 Trustees, normally we would have thought a Board of Trustees of Provident Fund, would be a
21 sovereign function. In common parlance, we would have imagined that this is the sort of thing
22 which is a function of the State. This is not a function of an Industry. But the Parliament
23 conceives of it and sees it as very much a part of industry where Industrial disputes can take
24 place in the Board of Trustees. Now, "Oil and Natural Gas Commission, deposit," I'm just
25 skipping over them and just highlighting some, "deposit insurance credit, Airport Authority of
26 India, Export Credit Guarantee, National housing Bank, Air Transport Service." Now see
27 towards the end of that, "or a banking or an insurance company, a mine and oil field, a
28 cantonment board or a major port. Any company with not less than 51% of share capital held
29 by the government, the Central Government or central public sector undertaking, subsidiary
30 companies, autonomous bodies owned or controlled by Central Government, appropriate
31 government is central government." Now the reason why I have cited banking companies
32 2(b)(b), defines banking company includes all including Reserve Bank of India. So, the body
33 which formulates Monetary Policy of the country is an industry under this.

34 **CJI SURYA KANT:** Please... do that.

1 **CHANDER UDAY SINGH:** Yes, so My Lords, I will close the Act immediately. I placed the
2 relevant points in a written note, I'll elaborate on it. Now, when it is argued that look, there
3 are already certain protections, why should the definition of industry be read broadly? The
4 ID Act itself, I'm sorry I said close the Act, the ID Act itself contains a series of safety valves.
5 Those safety valves include the power of the appropriate government to completely exempt
6 Industries. Completely exempt industries from the provisions of the Act, in the public interest
7 and in the interest of preservation of Industry. So just make a note of the provisions.

8 Your Lordship may note, Proviso B to Section 9A. Proviso B to 9A, "No notice of change is
9 required where the Fundamental Rules etcetera, and all kinds of government rules are
10 applicable, or any rules notified in that behalf, by the appropriate government". So for
11 instance, if there are service rules in a particular industry, let's say, for ONGC Service Rules,
12 they can notify it and say no, "no 9A notice would be required because there's already a service
13 rules".

14 9B allows wholesale power to exempt an entire 'industry' or a class of 'industries' from 9A for
15 what purpose, where serious repercussions to 'industry' and public interest are likely to ensue
16 from the requirement of not making changes. Please see 9B, and 9B applies to Private Sector
17 and Public Sector both. 9B says, "Power of government to exempt where the appropriate
18 government is of opinion that application of 9A to any class of industrial establishments, or
19 any class of workmen employed in industrial establishment affect the employers in relation
20 thereto so prejudicially, that such application may cause serious repercussion on the 'industry'
21 concerned, and that public interest so requires the appropriate government, may, by
22 notification in the gazette, direct the provisions of the said section shall not apply, or shall
23 apply to subject to conditions etcetera" So there's, again, appropriate government is
24 empowered to exempt. Then Section 19(iv) allows the appropriate government to curtail the
25 period of operation of awards. 19(iv).

26 **CJI SURYA KANT:** Yes.

27 **CHANDER UDAY SINGH:** My Lords may just note it. Then Section 36A says that, "awards
28 or settlements can be referred by the appropriate government to a Labour Court or Tribunal,
29 for interpretation where there is any doubt as to the interpretation". So if there's an award
30 holding the field for 20 years, let's say, it can still be referred because the appropriate
31 government feels that this needs reinterpretation. And then please see 36B. This I would ask
32 Your Lordships to kindly read. Please read B.

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

1 **CHANDER UDAY SINGH:** My Lords. Power to exempt: "Where the appropriate
2 government is satisfied in relation to any industrial establishment or undertaking, or any class
3 of industrial establishments or undertakings, carried on by a department of that government,
4 that adequate provisions exists for the investigation, and settlement of industrial disputes in
5 respect of workmen employed in such establishment or undertaking, or class of
6 establishments or undertakings, it may, by notification, the Official Gazette exempt
7 conditionally, or unconditionally, such establishment or undertaking a class of establishment,
8 from all or any of the provisions of the Act".

9 Now, my learned friend Mr. Farasat, wants Your Lordships, wants in effect, without meaning
10 disrespect, but wants in effect that the State Government should shoot the gun off the
11 shoulders of the Supreme Court. If the State Government feels that some class of industries is
12 protected, and therefore, they don't need the protection of the Industrial Disputes Act, they
13 have the entire power. They can issue a Section 36B notification. But no, we'll come and we'll
14 shoot the gun of the Supreme Court shoulders, and then we'll tell all the workers in our State,
15 that, no, no, no, you were let down by the Supreme Court, not by us. Politically we have we
16 have kept ourselves safe. Is this the argument before a Nine-Judge Bench after 48 years?
17 Please reinterpret a Provision, so that we can save certain private sector industries, or public
18 sector industries, from the consequences of their ill-doings, but do it by shooting the gun off
19 the Honourable Supreme Court shoulder. You have all power, you have all power to exempt.
20 Exercise your power. Don't come here and don't cry wolf after 48 years about... So now, Your
21 Lordships may put down the Act altogether.

22 Lastly, *Safdarjung Hospital* this is very important. *Safdarjung Hospital* had three fatal
23 flaws in it, which are self-evident on the face of it. So for anybody to say, "please reconsider
24 *Bangalore Water Supply* because *Safdarjung Hospital* was holding the field and it's a
25 Six-Judge Bench". Now I'll just enumerate those three fatal flaws immediately. The first is in
26 paras 11 and 12, the Supreme Court went on the basis that ID Act definition of 'Industry' has
27 been borrowed from Australia, and it's a fact. It was borrowed from Australia. They rely, they
28 make a reference to the amendments of Australia of 1910, 1909, 1910, but what they reproduce
29 there, is the unamended section of 1904. And 1911, the amended section is what is the
30 precursor to 2(j) of the Industrial Disputes Act. In my note, I have reproduced that. My Lords,
31 my note is at page 1 of Volume II. And Your Lordships will find, at page 10. At page 10, I have
32 reproduced... they've taken the wrong definition. The unamended definition of 1904 and used
33 that to say 'means and includes' wasn't intended to mean 'means and includes'.

34 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What's the next? There are three
35 flaws you said?

1 **CHANDER UDAY SINGH:** So, this is the first. So, and Your Lordship may just see the 1911.
2 The 1911 definition I've set out. I've got the full text of that. I can just may I hand that up?
3 Because in a note we've just put a very... I've just put them juxtaposed the three. So, I can just
4 hand that up. This may be read with page 10. That's the first note.

5 **CJI SURYA KANT:** Alright.

6 **CHANDER UDAY SINGH:** The second... My Lords have that? The second... Please give
7 copies to the learned Attorney.

8 **CJI SURYA KANT:** Yes, Mr. Singh. Please.

9 **CHANDER UDAY SINGH:** The second Your Lordship will find in from paras 21 to 24.
10 Without any basis, without any reasoning whatsoever, they said that hospitals are Industry.
11 Hospitals have all the characters of industry, but only if they're in the Private Sector. And, no
12 reasoning. And, please just see Volume V, page 450 is the judgement. I just request Your
13 Lordships to kindly see that.

14 **CJI SURYA KANT:** We have noted that. Paras 21 to 24.

15 **CHANDER UDAY SINGH:** And now, please see the last four lines at para 23. Last four lines
16 at para 23 of page 459 of Volume V. "We may say at once that if a hospital, nursing home or
17 dispensary is run as a business in a commercial way, there may be found elements of an
18 industry there. Then the hospital is more than a place where people can get treated for their
19 ailment it becomes a business." But they say in *Hospital Mazdoor Sabha*, the court went
20 wrong by applying that test to all hospitals. Now, I just asked myself the question what is the
21 difference as far as industrial disputes are concerned... as far as prevention of industrial
22 disputes are concerned, as far as protection to the employer and protection to the workmen
23 and most important protection to the patients. What is the difference between a hospital,
24 Safdarjung Hospital, Apollo Hospital, Medanta Hospital and Charitable Christian Medical
25 College, Vellore or some other charitable hospital? What is the difference? Does the industrial
26 dispute change? And, will that... if it's not a public utility service, would we not have flash
27 strikes in AIIMS? Would we not have flash strikes in Safdarjung Hospital? What will happen
28 to the patients then, if there are no conciliation and there's no protection given? So, it's very,
29 all very well to say this is a worker centric statute, therefore reconsider it. No, this is a statute
30 which seeks to balance all. Because Your Lordships have seen, interest of general public,
31 interest of industry. In the Section 36B or Section 9B where they say if it is critical for any
32 industry, public or private sector, 9A can be completely avoided. So, the Parliament was
33 cognizant and very conscious of that balancing which was to be done, and that is the scheme

1 of the Act in which we have to see this. So, this is number two. This is, in my respectful
2 submission, virtually unreasoned the finding.

3 **CJI SURYA KANT:** Yes, we've understood that.

4 **JUSTICE DIPANKAR DATTA:** What is the third one? There are three.

5 **CHANDER UDAY SINGH:** The third one is that on 2(n). 2(n) was shown to the...

6 **JUSTICE DIPANKAR DATTA:** You are referring to para 31?

7 **CHANDER UDAY SINGH:** Yes. Paras 26 to 31. But yes, 31 is the final... the court...

8 **JUSTICE DIPANKAR DATTA:** In my view 31 has a fundamental flaw.

9 **CHANDER UDAY SINGH:** My Lords, I'm very grateful to Your Lordships.

10 **JUSTICE DIPANKAR DATTA:** 31 has a fundamental flaw. The Honourable Bench,
11 Constitution Bench proceeded by the notifications only...

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

13 **JUSTICE DIPANKAR DATTA:** Despite noticing that hospital services were introduced by
14 legislation.

15 **CHANDER UDAY SINGH:** That's right. I am very grateful. That... that was the third fatal
16 flaw which I was just to place before Your Lordships.

17 **JUSTICE DIPANKAR DATTA:** Thank you.

18 **CHANDER UDAY SINGH:** That's all. I tried to stay within the time limit with the
19 Honourable Chief Justice.

20 **CJI SURYA KANT:** Thank you very much for your co-operation. Who will be next?

21 **CHANDER UDAY SINGH:** I will put in a note. Just one thing I would like to say, not on the
22 merits, but I was very happy when Your Lordship were pleased to appoint the two *amicus*
23 *curiae*. I must say, whatever little I know or have learned about Industrial law as well as Service
24 law, has been learned from the learned *amicus*. My senior was Mr. J.P. Cama, and if I have
25 learned anything it is in his Chambers, My Lord.

26 **VIJAY HANSARIA:** May I please Your Lordships?

27 **CJI SURYA KANT:** Yes, Mr. Hansaria, five minutes, five.

28 **VIJAY HANSARIA:** I'll try to be as brief as possible.

29 **CJI SURYA KANT:** Yes.

1 **VIJAY HANSARIA:** My Lord, I appear in Item number 19, 1901.18

2 **CJI SURYA KANT:** No problem, you can just start.

3 **VIJAY HANSARIA:** My written submissions are in Volume II, page 240. But having regard
4 to the proceedings before the court, I have revised it. May I just hand it over and take Your
5 Lordships on that?

6 **CJI SURYA KANT:** You can, no difficult.

7 **VIJAY HANSARIA:** May I just take Your Lordship through that?

8 **CJI SURYA KANT:** You can submit the revised one, that's what we, yesterday also,
9 requested everyone because after the arguments you might think of that.

10 **VIJAY HANSARIA:** See Volume VI. Your Lordship just have this and Your Lordship may
11 keep the Industrial Disputes Act side by side my later submissions. The first thing is the
12 definition of Industry, what Your Lordships are considering. Now, 2(j) says "Industry means:
13 any business, trade, undertaking, manufacture or calling of employers", that is what. Now
14 what the Triple Test does is, Triple Test only exemplifies, Triple Test is laid down in para 140
15 of the ***Bangalore Water Supply*** namely, "systematic activity, cooperation between
16 employer and employee and production or distribution of goods and services are inherent, are
17 essential, are crucial, vital, necessity for all business, trade, undertaking business or callings
18 of employer." So without My Lord, "alternatively put...", I have put in that in my written
19 submissions, "alternatively put, no business, no trade, no undertaking, no manufacture, no
20 calling for employers can be carried out unless there is a systematic activity, one, in
21 cooperation between employer and employee, two, and for production or distribution of goods
22 or services." Thus my Lord, the judgment of the ***Bangalore Water Supply*** only explains
23 the term Industry and does not go beyond the legislative intent, that is My Lord, my first
24 submission as to what the Triple Test is. There is a argument that the triple has expanded the
25 horizon of Industry, which is not visualized under the Act. In fact, none of those five activities,
26 which is an Industry meaning can be undertaken, without undertaking this Triple Test. And
27 the Triple Test only explains what is the meaning of Industry.

28 Secondly My Lord, the Industrial Disputes Act, right from 1947, has given benefits to the
29 various workmen from time to time, a series of benefits, My Lord. And these workmen who
30 have no bargaining power or unequal bargaining power. They are vulnerable and they are at
31 the mercy of the employer's, so far the conditions of service are concerned. That's why the
32 legislature have stepped in. And Your Lordship may kindly see, come to my page 2 of my
33 written submissions, the various benefits which are available to the workmen can be culled

1 out only from the beneficial provisions of the Industrial Disputes Act. I have tabulated them,
2 I'll just point it out, 1 or 2 of them. My Lord.

3 **CJI SURYA KANT: CJI SURYA KANT:** Yes, yes, kindly 9A, 9C and 10A, B, we have seen
4 everything. Yes, we have seen your note.

5 **VIJAY HANSARIA:** Your Lordships are so fast, I have not been able to go that.

6 **CJI SURYA KANT:** We have seen it because we have to do our homework.

7 **VIJAY HANSARIA:** Yes, I'm grateful to Your Lordships. So for example, without 11A can
8 there be a restatement? Madam Indira Jaising has taken to that, but there are other things, for
9 example, Works Committee. There are public grievances committee, for example, there are
10 Retrenchment compensation.

11 **CJI SURYA KANT:** What none of you have referred so far, is the unfair labour practice.

12 **VIJAY HANSARIA:** Unfair labour practice, I have put that My Lord.

13 **CJI SURYA KANT:** You know very well, you can proceed further.

14 **VIJAY HANSARIA:** If Your Lordships have seen, I see that Your Lordships have seen...
15 Serial number 15, I've said unfair labour practice could not have been prevented except if an
16 industry, if an undertaking, is not treated as an industry. And that's a very important, very
17 wide meaning has been given in Section 2(ra) read with the Fifth Schedule of that. Now the
18 third thing, Indira Jaising has said who has come to Your Lordship?

19 **CJI SURYA KANT:** That has been argued.

20 **VIJAY HANSARIA:** No, just there is a little explanation in that. All the states together,
21 across Party lines, whether it is a BJP ruled state, whether it's a Congress ruled state, that is
22 important My Lord. No, that is important for the purpose...

23 **CJI SURYA KANT:** You can raise when SIR is argued or something...

24 **VIJAY HANSARIA:** All the states together ruling, all the States, across Party lines, has
25 joined hands to deprive many of whom? To the workers. And as Mr. CU Singh...

26 **CJI SURYA KANT:** Appreciation should come from your side, that all of them have joined
27 hands.

28 **VIJAY HANSARIA:** And it is a very unanimity in the country of various political parties,
29 because one is Congress led, one is AAP led, one is DMK led, one is BJP led, but they are all
30 unanimous that the Congress... that the workers must be deprived of their rights. That is what
31 is very important. Normally, the industries would be coming.

1 **CJI SURYA KANT:** They are already non-political.

2 **VIJAY HANSARIA:** Yes, what I'm saying is when...

3 **CJI SURYA KANT:** [UNCLEAR] close to the interpretations I guess. All right.

4 **VIJAY HANSARIA:** Your Lordship has said there must be model employers. Now we see,
5 My Lord, all the States across Party lines are not model employers as such, that is what I'm
6 trying to say. Now IV at page 4. An argument is made that is a work centric judgment.
7 **Bangalore Water Supply** is worker centric, workman centric. I have quoted a judgment
8 of a recent judgment of Your Lordship's Court, where the Industrial Disputes Act is a
9 harmonious, it is for harmony and cordial relationship between the Parties. That is the
10 purpose. It does not merely give certain benefit to the workmen, as Mr. CU Singh has said, it
11 gives certain protection to the public utility services. You cannot criticize a judgment saying
12 that it's workman centric so change the judgment.

13 And fifthly, My Lord, the principle of *stare decisis*, it has been there for 48 years, my learned
14 predecessor Counsels have said, in the Volume II, pages 261 to 271, I have tabulated 27
15 judgments, quoted with approval, with the relevant quotations, which has consistently
16 followed this. Only two exceptions, My Lord, **Coir Board** where it did not fructify. And in the
17 present case where the Five Honourable judges takes a different view, but only on the view
18 there also I, just, Your Lordship would give me two minutes on that. Whether... Your Lordship
19 would give me a minute.

20 **CJI SURYA KANT:** That objection has already been made.

21 **VIJAY HANSARIA:** Now My Lord, an argument has been made whether **Bangalore**
22 **Water Supply** is seven judges or five judges or four judges. What I wish to say, on 21st of
23 July 1978, the Bench dissolves. No judgment can be given thereafter, on behalf of the Bench.
24 So the two or three opinions, one by Justice Chandrachud, and two by Justice Jaswant Singh,
25 are not the opinion of the Court, My Lord. They cannot be taken as an opinion of the Court.
26 Otherwise, three of Your Lordships were in the AMU Bench. Your Lordship said, "we did not
27 have time". It could have been given today, the judgments could have been risen, can it be
28 given today? Why Your Lordships gave it? Sat overnight and did it? Because the Bench is not
29 available. So the procedure which has been adopted by Justice Chandrachud and Justice
30 Jaswant Singh, by delivering an opinion on 7th of April 1998, is not an opinion of the Court,
31 because it has to be...

32 **CJI SURYA KANT:** Why you raise this issue? Why unnecessarily the names referred to this
33 issue is being [UNCLEAR]?

1 **VIJAY HANSARIA:** No it is necessary, My Lord, because on three occasions I have given
2 the details.

3 **CJI SURYA KANT:** No. If it is necessary, we will examine. Then now please continue.

4 **VIJAY HANSARIA:** On three occasions, this Court has said, "we did not have sufficient time,
5 the Bench is dissolving". Now if this procedure is available, My Lord, that it can be given after
6 retirement of one of the...

7 **CJI SURYA KANT:** No, it's alright. Tomorrow if there is a judgement by the Honourable
8 judges, and that's good enough for us.

9 **VIJAY HANSARIA:** That's what I'm saying. It is...

10 **JUSTICE B.V. NAGARATHNA:** Decisions were given. Only reasons were supplied later.

11 **VIJAY HANSARIA:** No. It cannot be given, otherwise Your Lordships could have given
12 judgments...

13 **JUSTICE DIPANKAR DATTA:** If I am not wrong, either ***Machhi Singh*** or the other one,
14 the reasons came one year later, laying down the law about the rarest of...

15 **GOPAL SANKARANARAYANAN:** ***Minerva Mills, Waman Rao*** and ***Bhim Singh***, all
16 three.

17 **JUSTICE DIPANKAR DATTA:** Yes. ***Bachan Singh***.

18 **GOPAL SANKARANARAYANAN:** All three because of retirements of judges, ***Minerva***
19 ***Mills, Waman Rao*** and ***Bhim Singhji***, all three.

20 **VIJAY HANSARIA:** But Your Lordships keep the judgment when the Bench is available, My
21 Lords.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Mr. Hansaria, what to do? Just
23 formulate your points [UNCLEAR], just formulate your points.

24 **VIJAY HANSARIA:** Very well. If Your Lordship kindly come to page 4, para 5. I have said
25 "on the principle of *stare decisis*, judgment of this Court in ***Bangalore*** does not require
26 consideration because it has stood by the test of time." The five... para 8 is important, page 6,
27 para 8. What are the principles to be applied for reconsideration? Your Lordships are
28 reconsidering it. Your Lordship has the jurisdiction to reconsider it, but, what are the
29 principles, My Lord, I have stated five principles taken from earlier judgments and they are,
30 My Lord, "there should be clear and compelling reasons to do so. There is a fair amount of
31 unanimity that the provision... previous decision is manifestly wrong. It is demonstrated that
32 the earlier decision was erroneous beyond all reasonable doubt. Merely because different view

1 is possible or more reasonable view is possible is not an adequate ground for reconsidering the
2 earliest opinion. Or if due to lapse of time or changed economic scenario, it is imperative to
3 have a fresh necessity." My Lord, for the changed scenario we have a new Act which is in place,
4 which will take care of the new scenario, subject to challenge whatever it is being done. But
5 today we have a new Act which is in place. So, in my respectful submission, these principles
6 have culled out from the various judgments which I have mentioned there. So far as
7 'unanimous' part is concerned, Your Lordship are saying that I may not go, but I will request
8 Your Lordship to kindly go through this para 10 of which I have mentioned there. And this has
9 importance because otherwise the judges cannot give it after the retirement of one of the
10 Honourable Judges. And that becomes the ground for review. The ground for review of five
11 judges is that Justice Beg did not have the opportunity to look into the judgments of the other
12 two Honourable Judges. And in any event, My Lord, in view of the *Trimurti Fragrances*,
13 that that is... it is... it will be deemed to be a judgment of the Five Honourable Judges, My
14 Lord... Seven Honourable Judges and not of any smaller Bench by that.

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

16 **VIJAY HANSARIA:** And one last sentence, My Lord. That all the five... four Honourable
17 Judges who has given the opinion, they have said this test are till superseded by legislation.
18 Now today we have a different legislative scheme and there is... only due to pending cases Your
19 Lordship may not consider it to reconsider it. In any event, if Your Lordship has to say it will
20 protect all the pending litigations also, if anything goes wrong then it will be...

21 **CJI SURYA KANT:** Thank you, Mr. Hansaria.

22 **VIJAY HANSARIA:** I'm grateful to Your Lordships.

23 **CJI SURYA KANT:** Yes, Mr. Gopal.

24 **GOPAL SANKARANARAYANAN:** May I please, Your Lords? I'll keep it brief because I
25 adopt all the arguments of Ms. Jaising and Mr. Chander Uday Singh. I think they've covered
26 most of the field. I think in fairness, the Attorney General in his written submissions also has
27 conceded that the Triple Test is not something that they're taking a cavil with. So really, the
28 scope I believe that we have to address is in a very narrow passage, and I just want to address
29 on those two aspects. One is about the sovereign/public function, the other is about the
30 charitable aspect. Now the charitable aspect, there is an exception that's been carved out in
31 Justice Krishna Iyer's own judgment, which Justice Chandrachud agrees with, which is on the
32 limited aspect of those clubs Justice Krishna draws a distinction between clubs like the Madras
33 Gymkhana Cricket club etc., and those he said which are the small clubs, the community clubs
34 by young men and women that they form for their own evenings etc., where it's actually self-

1 serving and the key here is held by the Secretary, those guys. So, he says only that aspect of
2 clubs will he be excluding. Now, I just want to address and I believe the test... I've just handed
3 up my written submissions... just two, three paras here and there that I want to read out to
4 Your Lordship. One is, if Your Lordships will just have that, it's in Volume VI is where the
5 written submissions are... it's... sorry? There's hard copies and soft copies.

6 **CJI SURYA KANT:** We have on the screen.

7 **GOPAL SANKARANARAYANAN:** Page 4. Page 4 of my submission, sub-para (d). I'm
8 taking my first two roman numeral submissions as read. I will not read that again.

9 **CJI SURYA KANT:** "All of this being so...". Mr. Gopal, in Volume VI.

10 **GOPAL SANKARANARAYANAN:** "All of this...", yes. In Volume VI, there's a bunch of
11 written submissions. Mine I understand is Serial no. 8 in that...

12 **CJI SURYA KANT:** It's there on the screen.

13 **GOPAL SANKARANARAYANAN:** In the Respondent's file it's written. It's Volume VIII,
14 hard copies have also been given, but it's Volume VIII...

15 **CJI SURYA KANT:** It's on the screen, yes.

16 **GOPAL SANKARANARAYANAN:** Yes. If I can just read that. It's on the screen as well.
17 "All of this being so, the approach that would be commended..." All of this I'm referring to is
18 the background that eventually it's about industrial harmony. Article 19(i)(g) and 21, rights of
19 both the employers and the employees, not only on workman's interest, because that is an
20 issue that can fall either way. So, keeping all that in mind; adjudicatory process, penalty
21 process, everything that Ms. Jaising said, because she's got the experience of 50 years which I
22 don't have in this area, all of this being so, the approach that would be commended in
23 considering whether an activity is industry for the purpose of Section 2(b) could be as follows;
24 "One, to examine only the activity," which is what the new section is, the word used now is
25 activity, "to see whether it comes within the width of the words undertaking, calling or
26 evocation which are the widest phrases employed in the provision." In 2(j), these three words
27 are the widest among those. "Two, to ignore who is carrying out the activity concerned because
28 that is not germane to the purpose of industrial regulation. Three, to ignore the motive behind
29 the activity as long as it is legal, a charitable activity cannot be permitted to be unregulated. As
30 a result, it is perhaps the judgment of Chandrachud J., as he then was, at paras 175 to 182 that
31 provides the most logical and consistent approach in interpreting the provision without the
32 artificial exceptions carved out by (i) or (j)." Just two paras of Justice Chandrachud I want to
33 read because it is now nine judges, so I believe that there is a refreshing consistency in those
34 two paragraphs which, I mean I grappled with it, but I found it difficult not only because of

1 Justice Iyer's language but also the kind of nuances that are drawn. For subsequent
2 interpretation, it becomes difficult though it has been followed. If I can just take Your
3 Lordships to the **BWSSB** judgement. This has not been read to Your Lordship so if I may just
4 read that, para 175 of the judgment, Volume V(B). This is page 85 of Volume V(B). I'm sorry.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** "Having thus expressed..."

6 **GOPAL SANKARANARAYANAN:** I just thought if I could just read 174 above, they are
7 referring to **Hospital Mazdoor Sabha** and in that context in para 174, "The court expressed
8 its opinion in a characteristically clear tone by saying that if the object and scope of the
9 Industrial Disputes Act are considered, there would be no difficulty in holding that the relevant
10 words of wide import have been deliberately used by the legislature in defining industry in
11 Section 2(j). The object of the act, the court said, was to make provision for the investigation
12 and settlement of industrial disputes and the extent and scope of its provisions would be
13 realized if one were to bear in mind the definition of industrial dispute given by 2(k)..." And
14 the other definition I'm not reading all that, if I can just come to the last bit, "it is the 'character'
15 of the activity which decides the question as to whether the activity in question attracts the
16 provision of Section 2(j), who conducts the activities at the court and whether it is conducted
17 for profit or do not or not, do not make a material difference. But having thus expressed its
18 opinion in a language which left no doubt as to its meaning, the court went on to observe that
19 though 2(j) used words of a very wide denotation, it is clear that a line would have to be drawn
20 in a fair and just manner so as to exclude some calling services or undertakings from the scope
21 of the definition. This was considered necessary because if all the words used in the definition
22 were given the widest meaning, all services and all callings would come within the purview of
23 the definition, including services rendered by a person in a purely personal or domestic
24 capacity or in a casual manner. The court then undertook for examination what it
25 euphemistically called a somewhat difficult problem to decide, and it proceeded to draw a line
26 in order to ascertain what limitations could and should be reasonably implied in interpreting
27 the wide words used in 2(j). I consider with great respect that the problem is far too policy
28 oriented to be satisfactorily settled by judicial decisions, and it says...", and Your Lordship
29 observed, "the Parliament must step in."

30 In the next page, about six lines down, where it says, "The court ultimately drew a line..." Next
31 page My Lords, "The court ultimately drew a line at the point where the regal or sovereign
32 activity of the government is undertaken and held that such activities of the government as
33 have been pithily described by Lord Watson as the primary and inalienable functions of a
34 constitutional government, could be stated negatively as falling outside the scope of 2(j). The
35 judgment concludes with the summing etc.", last four lines of that, last four lines of that para,
36 "Seeds of many a later judgement were sown by these limitations, which were carved out by

1 the court in order to reduce the width of definition, which was clearly described as having been
2 deliberately couched by the legislature in words of the widest amplitude. These exceptions
3 which the court ingrafted upon the definition of Industry in 2(j), in order to give to the
4 definition the merit of reasonableness, became in course of time, as many categories of
5 activities exempted from the operation of the Definition clause. To an extent it seems to me
6 clear that, though the decision in **Hospital Mazdoor Sabha**, that a government-run
7 hospital was an Industry, proceeded upon the rejection of the test of *noscitur a sociis*, it is this
8 very principle which constitutes a rationale of the exceptions carved out by the court. It was
9 said that the principle of *noscitur a sociis* is applicable in case of doubt and since the language
10 of the definition admitted of no doubt, the principle had no application. But if the language
11 was clear, the definition had to be given the meaning which the words convey and there can
12 be no scope for seeking exceptions. The contradiction with great respect is that the court
13 rejected the test of association of words while deciding whether the government-run hospital
14 is an industry, but accepted that very test, while indicating which categories of activities would
15 fall outside the definition. The question then is, if there is no doubt either as to the meaning of
16 the words used by the Legislature in 2(j), or on the question that these words are of amplitude,
17 what justification can one seek, for diluting the concept of 'Industry', as envisaged by the
18 legislature? On a careful consideration of the question, I'm of the opinion that **Hospital**
19 **Mazdoor** was correctly decided insofar as it held that JJ Group of Hospital was an 'industry'.
20 But, respectfully, the same cannot be said in regard to the view of the court that certain
21 activities ought to be treated as falling outside the definition clause".

22 I don't want to keep reading further, but, the next para was dealing with government function.
23 It's very important. It's central to my argument, so please read that when Your Lordships have
24 time, which is para 179. Para 180 deals with 'charitable' and para 181 deals with 'solicitors'.
25 And finally, last part of para 181 deals with 'clubs'. And para 182 with 'charitable'. 182, if in the
26 margins Your Lordships can note, para 119 of Justice Krishna Iyer, because it's agreed to, that
27 the limitation of 'charitable' is only that limitation which Justice Krishna Iyer has drawn. My
28 Lord Justice Chandrachud adopts that as well, which is the self-serving being excluded. So, in
29 my view, this is a cohesive judgment which captures, what I believe, would be our argument,
30 if for a minute I can take you back to my notes. So, this is what I want to say, with reference to
31 both 'charitable' as well as 'governmental functions', 'sovereign functions'. These are for
32 'industrial' harmony. So it doesn't matter across the board, and for an idea of what we are
33 dealing with, the kind of cases Your Lordships have been dealt with. Here in the petitions
34 before Your Lordships, you're dealing with three temples, one gaushala and States, that's what
35 you're dealing. Intervenors have come, which are a few hospitals, AIIMS was heard, etcetera.
36 But this is really the compass of who Your Lordships are dealing with, so these large industries

1 etcetera, which we have in our mind, they are not here either as petitioners or intervenors, I
2 just want to clarify that.

3 Now, just in my note, if Your Lordships will come for a minute to page 8, which is the first
4 annexure to the note. Page 8, this is the first annexure. This, we have comprehensively looked
5 at all the Supreme Court judgments, from the inception, and because it's colour coded at least
6 in... it's colour coded, Your Lordships will see, this is from the beginning, from **D.N. Banerji**
7 onwards. If Your Lordship sees at the extreme left, it gives you an idea, what are the
8 departments and organizations, municipalities. My Lord Justice Datta has it, first one?

9 **JUSTICE DIPANKAR DATTA:** This one?

10 **GOPAL SANKARANARAYANAN:** Yes, that one. So, the pink ones are where it's not an
11 Industry. That's what Your Lordships have held. Green eventually Your Lordship will find, is
12 **BWSSB**. And thereafter, there have been as many as 27 cases where Your Lordships have
13 applied **BWSSB**, one way or the other. Now, I believe that Justice Chandrachud's view is the
14 best view, but Your Lordships have been applying Justice Krishna Iyer's majority view
15 throughout, and this the reason why all of these are set out. So Your Lordships have a flavour
16 at the extreme left, of clinics, municipalities, irrigation departments, education institutions,
17 etcetera, immediately after **BWSSB**, and where there has been a decision one way or the
18 other. It's not that the workmen have always succeeded, many times Your Lordship have
19 decided some are not Industries applying this test.

20 Therefore, the next page, after that at page 13, are the list of the High Court judgments, and
21 these High Court judgments, which are the ones which have followed **BWSSB**. In that, there
22 are 66 of them. The reason I mentioned this is, if Your Lordships will come to page 25, two
23 paragraphs. One of a seven judge decision, a unanimous judgment penned by Justice
24 Gajendragadkar, on how *stare decisis* with reference to decisions which are already made. It's
25 a completely different matter where it's coming up for the first time, where a decision is already
26 made. There's a small exception that they've carved out, with reference to the number of
27 judges. I'm just drawing that to Your Lordship's attention, one sentence at page 25. This is in
28 case of **Keshav Mills** in 1965, about 20 lines down. It's right in the middle of the page, of
29 page 25. I've put that extract out. This is Justice Gajendragadkar speaking for a unanimous
30 Bench, it's underlined, "but different considerations must inevitably arise, where a previous
31 decision of this Court has taken a particular view, as to the construction of a statutory
32 provision. As for instance, Section 66(4) of the Act, when it is urged that the view already taken
33 by this Court should be reviewed and revised, it may not necessarily be an adequate reason for
34 such review and revision to hold that though the earlier view is a reasonably possible view, the
35 alternative view which is pressed on the subsequent occasion is more reasonable." About four

1 lines further, where it's further underlined - "frequent exercise by the court of its power to
2 review its earlier decisions on the ground that the view pressed before it later appears to the
3 court to be more reasonable may incidentally tend to make law uncertain and introduce
4 confusion which must be consistently avoided." And then three lines later, "the court must be
5 satisfied with a fair amount of unanimity." I'm saying among this Nine Judge Bench there
6 must be a fair degree of unanimity on it. It's not simply a matter because we've seen this in the
7 past, "...fair degree of unanimity among its members that the revision of the said view is fully
8 justified." And then, concluding next page 26, the third line, "is the court hearing such plea
9 fairly unanimous that there is such an error in the earlier view?" These are the questions to be
10 looked at. "What would be the impact of the error on the general administration of law or on
11 public good? Has the earlier decision been followed on subsequent occasions, either by this
12 court or by High Court? And would the reversal of the earlier decision lead to public
13 inconvenience, hardship or mischief of a similar nature?" ...is the next judgment extract. That's
14 **Waman Rao**. Justice Chandrachud speaking for four. Justice Krishna Iyer agrees with him
15 on that. It's in the same page.

16 And then, one last thing I wanted Your Lordships to see, which is page 45, the very last page
17 of that. If Your Lordships have the hard copy, it's the absolute last page, Annexure F. If Your
18 Lordships were to exclude from sovereign functions these industries which are for example,
19 Defence Research Institutes, Military Clubs, Ministry of Defence, Home Affairs, Forest etc.,
20 etc., the posts on the extreme right will all cease to be workmen for the purposes of the
21 definition of the Act, because the Act says the workman has to belong to an industry. If the
22 industry goes, the workman goes. So, the workman's rights under the Act are inextricably tied
23 up to it being an industry. So, all of these people; gardeners, cleaners, doormen, drivers, etc.,
24 all of them would be completely excluded. I don't believe that that would be the reason why
25 Your Lordships would revisit this. And then finally, I'm just taking Your Lordships back to the
26 note, right at the beginning. Page 5... page 6 of the note. I have taken Your Lordships... I'm just
27 taking Your Lordships to the bottom of page 5, (v). I'm just referring to the questions that Your
28 Lordships have framed. So, on Question 1 which is the Triple Test, I have pointed out the page
29 number where it's been accepted, really that's not too much of an issue today. Question 2 and
30 I also adopt everything that Ms. Jaising said that all three limbs etc., have been adopted in the
31 law as it stands, so it's a consistent position. Questions 2 and 3 which are sovereign and social
32 welfare are dealt with under (v). Your Lordships may take that as read. I just want to point out
33 one small thing, that in Justice Krishna Iyer's judgment conclusion para 143(b) is where that
34 exception is carved out for the sovereign functions. Para 143(b). I believe that that para 143(b)
35 does not take into consideration the nine judge decision that Mr. Chander Uday Singh referred
36 to yesterday on that 'Legal Remembrancer', Your Lordships will recall. Now Legal
37 Remembrancer, I have a separate note which is Annexure E to this, which gives you the entire

1 history. But I'm not taking you through it on how that came to be. From 1961 in the earlier
2 **Calcutta** case, applying the Common Law principles of how sovereign states etc., are not
3 bound by statute. Justice Wanchoo gave a very stinging dissent in that case. That Justice
4 Wanchoo's dissent effectively became the majority in Legal Remembrancer and Legal
5 Remembrancer effectively stays because that was a case where a market was set up by the State
6 of Bengal in Calcutta without licenses, without following the law. Penalties were imposed and
7 in Legal Remembrancer, the Nine-Judge Bench says that the State can't wriggle out. The
8 statute applies to them, either express reference saying that it applies to you is not necessary,
9 which was the earlier view. That was overruled. So, when the statute does apply to you and the
10 statute makes no exception to you, not in the section at all, and nowhere else there's an
11 exception. In fact, it is only like employer definition in the Act, shockingly refers only to
12 government employers it doesn't refer to private employers at all. But perhaps it's giving clarity
13 about who will be the employer for the purpose of Governmental Authority, State, etc. So,
14 because of that, this **BWSSB** judgment before making that exception for sovereign should
15 have considered that the binding law, binding the seven-judge decision was a nine-judge
16 decision which said that it binds the State, statutes bind the State unless there's an express
17 exception, there is no express exception in the statute.

18 Now the second aspect and the last aspect that I have to say on this is this, that the lack of an
19 alternative remedy to those who may not be deemed to be Industries was the reason why the
20 1982 statute was not notified. This was taken note of by Your Lordships, in the five judge to
21 seven judge reference in this case, in 2005. I referred to the two paragraphs where, Ms Jaising
22 in fact, had referred to the **Aeltemesh Rein** line and said that look, they have not notified it,
23 please, it should be notified. The response is, we don't have... Union of India's response is that,
24 we don't have an alternative remedy. The paragraphs of the affidavit of the Union of India is
25 in fact, extracted, in a separate judgment, I'll hand up copies. This is a **Gajanan Maharaj**
26 **Sansthan**, which I think was referred to yesterday, just give copies. The entire affidavit of the
27 Union of India is extracted where they refer to the fact that, we don't have alternate remedies
28 for these other industries, that is why I have not notified this. If I notify this, those who are
29 excluded will have no remedy available. Now this is the consistent position why that 1982
30 amendment didn't come into force; I'm not reading that. Now, that is why there's a lack of
31 alternate remedy, if Your Lordships were to limit the definition of Industry.

32 One last thing My Lords. I think three of Your Lordships were there in the **Tejpal** batch
33 dealing with that Section 24(2) of the Land Acquisition Act and the fallout of that...

34 **CJI SURYA KANT:** The entire Bench?

35 **GOPAL SANKARANARAYANAN:** The entire batch. Justice Datta knows this last week...

- 1 **CJI SURYA KANT:** The entire Bench? That was a Three-Judge Bench?
- 2 **GOPAL SANKARANARAYANAN:** Entire bench, yes, sitting alternately there. Now there,
3 we have had this fallout coming, where the petitions still keep coming on this. I just want to
4 caution one thing, that whatever Your Lordships declare one way or the other, please make it
5 prospective because all these decisions, these 100 decisions of High Courts and Supreme
6 Courts, we don't want that to be brought up now like it was brought up in those cases saying,
7 oh, Indore municipality has come, so we're filing appeals after 3000 days, 4000 days, etc.
8 Whatever Your Lordships declare, please declare it prospective from the date of this
9 judgement and it'll hold the field for 2(j). We have, as I mentioned to Your Lordships, I am
10 appearing for the All India Trade Union Congress. We have nearly 1.4 crore workers, etc. We
11 have challenged the provision of the new code, the definition, to that limited extent which I'm
12 also arguing here, so there's an overlap. So please also that one other caveat My Lords, I've
13 mentioned it in my note. Just please save our challenge, let that not be whatever manner, it's
14 listed tomorrow is what I understand, but please say that. Most grateful, My Lord.
- 15 **JAYNA KOTHARI:** If I may go next?
- 16 **JUSTICE B.V. NAGARATHNA:** That's why there is explanation to Order 47, Rule 1, a
17 subsequent change of law will not touch upon the already delivered judgment.
- 18 **GOPAL SANKARANARAYANAN:** I argued that unsuccessfully, My Lords.
- 19 **JUSTICE B.V. NAGARATHNA:** No, I thought they are.
- 20 **GOPAL SANKARANARAYANAN:** No, no, I know, but when we argued it, we were hoping
21 that that *Manohar Lal* line would not be implemented but My Lordship had taken it. I'm
22 grateful. I'm most grateful.
- 23 **JAYNA KOTHARI:** If I may go now?
- 24 **JUSTICE B.V. NAGARATHNA:** Otherwise there's no finality in anything.
- 25 **GOPAL SANKARANARAYANAN:** Exactly.
- 26 **JUSTICE B.V. NAGARATHNA:** And that is not rule of law also. Continuation of the list.
- 27 **GOPAL SANKARANARAYANAN:** That was in fact arising from Your Lordship's reference,
28 because of the difference of opinion, it went to the three judges.
- 29 **JUSTICE B.V. NAGARATHNA:** If you, you can take it later on in an appeal.
- 30 **GOPAL SANKARANARAYANAN:** Yes. My Ladyship may take it up privately with the
31 authors of the judgments. I'm grateful.

1 **P.V. SURENDRANATH:** Yes, I won't repeat anything because My Lords, my points of
2 course, I have given a note.

3 **CJI SURYA KANT:** Five minutes please.

4 **P.V. SURENDRANATH:** I have given a note in Volume VI that is now circulated also.

5 **GOPAL SANKARANARAYANAN:** May I be excused, My Lords? I'm sorry.

6 **P.V. SURENDRANATH:** All the points, except two aspects, are covered by Ms. Indira
7 Jaising and C.U. Singh. And of course now, Sankaranarayanan. One aspect, we know that we
8 are not going into the new code for interpreting the provisions. But one fact remains My Lords,
9 because of a judicial notice. Despite the clamouring the plea for expansive reading of sovereign
10 function and equate sovereign functions with government functions, there is no such provision
11 in the new code. So that means the Parliament and the government is accepting the provision
12 only for that purpose. So when they accept the law and that position continued for the last 50,
13 almost 50 years, there cannot be any plea for reconsideration by the government at least. So
14 that is one aspect. And consciously Parliament avoided that. They only said that [UNCLEAR]
15 to the sovereign function. There is no government function, welfare activities, nothing like
16 that, even the present code 2(p), My Lord. So that's one aspect. Secondly, regarding large
17 number of, more than 2 million of employees, so-called scheme employees, workers, they are
18 working under different departments. They have no avenue for relief. They are not under
19 Article 311, no other remedies. So, necessarily, if they are removed from the concept of
20 Industry, definitely, there will be severe miscarriages. We are not for employees coming under
21 311. Ever so, departments, of course, they are now engaging workers because most of the
22 agricultural colleges, universities, they have got farms, large number of farm labourers are
23 being employed or engaged. So they should come under this concept of Industry, otherwise
24 there is no remedies at all. So I referred to this aspect in page number 623 and page number
25 8, Clause 7. These are my basic concerns. Obligated, My Lord. Thank you for...

26 **CJI SURYA KANT:** Thank you. Thank you, Mr. Surendranath. Yes, Madam.

27 **JAYNA KOTHARI:** In this matter, I have just circulated my note. My Lords, in this matter,
28 I have just circulated my physical note. My Lords, I appear for an organization that works with
29 sanitation workers and workers engaged in sewage cleaning and manual cleaning. Though
30 they are... though it is supposed to be prohibited, the fact is that they are still engaged by both
31 municipalities and private parties, to engage in sanitation work. Now My Lords, I have two
32 main arguments. The first one, in my note, if My Lords may see, if My Lords have to decide
33 the meaning of the definition of 'Industry', I would argue to build on what has been argued
34 before, is that we have to take a purposive approach. Now a purposive approach of

1 interpretation, of course, My Lords are very familiar with. In fact, even starting from **D.N.**
2 **Banerji** in para 1.2, **D.N. Banerji** itself in the judgment said that the ID Act, the meaning
3 should be ascertained from not only the words employed in the definition, but also the setup
4 and context, to ascertain really what was meant to be conveyed. My Lords, purposive
5 interpretation to really focus on what is the object of the legislation. My Lords, our Supreme
6 Court in **Eera vs State of NCT** also the issue, in fact, they quote where the concept of
7 purposive interpretation came out, and I quote Justice Learned Hand's observation that was
8 there in para 1.3. What this Honourable Supreme Court, I think it was Justice Dipak Misra's
9 decision and I quote, "Of course it is true that the words used even in our literal sense are the
10 primary and ordinarily the most reliable source of interpreting the meaning of any writing, be
11 it a statute, a contract or anything else; but it is one of the surest indexes of a mature and
12 developed jurisprudence not to make a fortress out of the dictionary, but to remember that
13 statutes always have some purpose or object to accomplish, whose sympathetic and
14 imaginative discovery is the surest guide to their meaning".

15 So, My Lords, ultimately what is the meaning and object of the ID Act? The meaning and object
16 of the ID Act, my submission if we look at the **BWSSB** judgment of Justice Krishna Iyer, is to
17 protect worker's rights. Though it is on industrial disputes, yes, to ensure that industrial
18 disputes maintain industrial peace. But ultimately remedies were there to protect workers, so
19 that they are not left remedy-less. And My Lords, para 18 of the judgment in **BWSSB**, I have
20 extracted at para 1.5 of my Written Submission. "To sum up", where Justice Krishna Iyer
21 summarized it, "to sum up the personality of the whole statute, be it remembered as a welfare
22 basis. It being a beneficial legislation which protects labour, promotes their contentment and
23 regulates situations of crisis and tension, where production may be imperilled by untenable
24 strikes and blackmail lockouts. The mechanism of the Act is geared to conferment of regulated
25 benefits to workmen and resolution, according to a sympathetic rule of law of the conflicts,
26 actual or potential between management and workmen. Its goal is amelioration of the
27 conditions of workers, tempered by a practical sense of peaceful coexistence to the benefit of
28 both. Not a neutral position, but restraints on *laissez-faire* and a concern for the welfare of the
29 weaker lot. Empathy with the statute is necessary to understand not merely its spirit but also
30 its sense. One of the vital concepts on which the whole statute is built is 'Industry', and when
31 we approach the definition in Section 2(j), we must be informed by these values".

32 My Lords asked the question that the route to workers' rights is through the industry, through
33 the definition of industry, yes. But the core of the object of the Act, in my submission is that it
34 is to protect workers rights. And from that aspect, if we were to look at the definition of
35 'industry', then I would submit My Lords, in fact, many of the other decisions have relied on
36 again, elaborate on the aims and objects and intent of the ID Act. I don't want to reiterate. I

1 have... **Sh. Mohammad Ali vs State of Himachal Pradesh** , again it reiterates that it is
2 a welfare legislation to protect employees from arbitrary retrenchments.

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

4 **JAYNA KOTHARI:** Yes. So I will not reiterate those. **Ajaib Singh** all of those reiterate.
5 Then My Lords, in addition to looking at the meaning of the ID Act, in para 1.9. My Lords, in
6 **BWSSB**, the Court also said that the Dispute... Industrial Disputes Act has to be interpreted
7 using the lens of Article 38, 39, 42, 43, 43A of the Directive Principles. Because these articles
8 of the Directive Principles also protect the rights and welfare of workers. Of course, all of those
9 are reiterated. We protect the adequate means of livelihood, health and strength of workers,
10 just and humane conditions of work, because all of those conditions are there in the ID Act. 43
11 says "that to all workers, industrial or otherwise, work, a living wage and conditions of work"
12 and 43A also. So, how do we ensure that our definition My Lords, takes into account the
13 meaning given under the DPSPs as well? Now My Lords, that is my first submission. If we
14 were to take that as our purposive interpretation and guidance, certainly the definition we
15 would want to give to 'industry' would be a wide, broad ranging definition and not a narrow
16 one as argued by the Petitioners.

17 Now My Lords, the second point. On excluding of the sovereign function. Now, exclusion of
18 the sovereign function, My Lords have raised that issue. In **BWSSB**, para 143. Para 143 makes
19 a very narrow exclusion of the sovereign function. And may I just read out para 143 which I've
20 extracted. "The dominant nature test, where a complex of activities some of which qualify for
21 exemption, others not, involves employees on the total undertaking, some of whom are not
22 workmen as in the **University of Delhi** case or some departments are not productive of
23 goods and services if isolated. Even then, the predominant nature of services and the
24 integrated nature of departments, as explained in the **Corporation of Nagpur**, will be the
25 true test. The whole undertaking will be industry, although those who are not workmen by
26 definition may not benefit from status." B My Lords. "Notwithstanding the previous Clauses,
27 sovereign functions strictly understood alone, qualify for exemption, not the welfare activities
28 of economic adventures undertaken by government or statutory bodies."

29 Then they talk about severability. Here I want to focus on sovereign functions strictly
30 understood alone. My Lords, My Ladyship asked, what is the... in the... in understanding
31 sovereign functions a question was raised, 'what about LPG and how do we look at it in the
32 context of the increasing privatization?' My Lords, sovereign functions have has been largely
33 understood to mean those functions which cannot be privatized. Today My Lords, almost all
34 functions of the State are privatized, health, education, water. In many instances... all other
35 functions are privatized. But then sovereign functions would be those limited functions which

1 cannot be privatized. And My Lords or cannot be alienated by the State to private Parties. And
2 My Lords, one decision that looked at industry from the context of sovereign functions which
3 has not been referred is the 2000 *APMC vs Ashok Harikuni* case and My Lords that is
4 already there in Volume V. Could I please request if Volume V can be seen at para... This is at
5 Volume V already filed, 3944, para 21. That was exactly the issue raised. What as for sovereign
6 functions and how would the definition of industry under *BWSSB*, will it be curtailed or not?
7 And in para 21, if I could read out, it's at page 3944 of Volume V. "In other words..." My Lords
8 have found it?

9 **CJI SURYA KANT:** Yes.

10 **JAYNA KOTHARI:** "In other words it all..." and here, My Lords, the issue was whether
11 *APMC, the Agricultural Produce Market Committee*, whether that would be
12 industry? Argument made was the market is being regulated by the State and therefore it falls
13 within sovereign functions. The Court denied that contention. And My Lords para 21. "In other
14 words, it all depends on the nature of power and the manner of its exercise, what is approved
15 to be sovereign is defence of the country, raising armed forces, making peace or war, foreign
16 affairs, power to acquire and retain territory. These are not amenable to jurisdiction of
17 ordinary civil courts. The other functions of the state, including welfare activity of the State,
18 could not be construed as sovereign exercise of power. Hence every governmental function
19 need not be sovereign. State activities are multifarious, from the primal sovereign power which
20 exclusively inalienably could be exercised by the sovereign alone, which is not subject to
21 challenge in any Civil Court to all the welfare activities which would be undertaken by any
22 private person. So merely if one of the employee of statutory bodies would not take it outside
23 the Central Act, if that be so, then Section 2(a) of the Central Act read with Schedule 1, gives a
24 large number of statutory bodies which should have been excluded, which is not. Even if a
25 statute confers on any statutory body, any function which could be construed to be sovereign
26 in nature, would not mean every other function under the same statute to also be sovereign.
27 The court should examine the statute to sever one from the other by comprehensively
28 examining various provisions of that statute. In interpreting any statute to find if it is an
29 industry or not, we have to find its pith and substance. The Central Act is enacted to maintain
30 harmony between an employer and employee, which brings peace and amity in its functioning.
31 This peace and amity should be the objective in the functioning of all enterprises. This is to
32 benefit both employer and employee misuse of rights and obligations, by either or stretching
33 it beyond permissible limits have to be dealt within this framework, but endeavour should be
34 in all circumstances, to not to exclude any enterprise from its ambit."

35 Para 22. They refer to *Nagendra Rao*, My Lords, *Nagendra Rao* was the whole line of
36 statutory sovereign immunity.

1 **CJI SURYA KANT:** Yes, this is non- principle. You can proceed further.

2 **JAYNA KOTHARI:** My Lords may just refer to para 29 of the same decision. Para 29 refers
3 to 2(a) which was referred how many central government industries and statutes are all
4 covered. 30, My Lords, para 30. "From the aforesaid catena of authorities, Inalienability...",
5 this is what I raised, My Lords, that it cannot be alienated. "Inalienability is one of the basic
6 character of sovereignty."

7 **CJI SURYA KANT:** This has been argued.

8 **JAYNA KOTHARI:** Yes. I will just highlight one more para. "The Encyclopaedia of the
9 American Constitution with regard to sovereignty attempts to define it." And then My Lords,
10 31, words and para, "The sovereign powers of a government include all powers necessary to
11 accomplish its legitimate ends and purposes. Such powers must exist in all practical
12 governments. These are the incidents of sovereignty of which a state cannot divest itself. And
13 then they go on to exercising the right of taxation by the right of eminent domain or through
14 its police powers."

15 1. "So sovereign function in the new sense may have very wide as primary inalienable
16 functions. Broadly, it is taxation, eminent domain and police power which covers its fields.
17 It may cover its legislative functions, administration of law, eminent domain, maintenance
18 of law and order, internal and external security, grant of pardon. So the dichotomy
19 between sovereign and non-sovereign function could be found by finding which of the
20 functions of the State could be undertaken by any private person or body. The one which
21 could be undertaken cannot be sovereign functions." So therefore, My Lords, the test for
22 sovereign function is what cannot be alienated. And therefore, if we limit it to that, the
23 limits of sovereign functions or the sovereign functions which could be excluded are very,
24 very limited. Thereafter, My Lords, I will not reiterate a whole range of cases from the
25 **Nagendra** case... statutory immunity was also limited, I will not reiterate.

26 **CJI SURYA KANT:** You need not.

27 **JAYNA KOTHARI:** Finally My Lords, at para 2.9, Ms. Jaising also raised the issue of data.
28 In fact in 2002, there was a National Labour Commission Report, which in fact gave its
29 recommendations after a detailed study all over the country. And ultimately, the
30 recommendation given which is available, My Lords, is that they recommended that in fact the
31 entire definition should only be under establishment. All workers, including government
32 workers and one of their recommendations is My Lords, I've culled out.

33 **CJI SURYA KANT:** Yes.

1 **JAYNA KOTHARI:** "One of the most important steps that one needs to take in rationalising
2 and simplifying existing labour laws is the area of simple common definitions such terms
3 include worker, wages and establishment. By making the law applicable to establishments,
4 employing 20 or more workers, irrespective of the nature of activity in which the establishment
5 is engaged." So therefore, all workers: government, private, charitable, even domestic workers;
6 were to be included, and the whole concept of 'sovereign function' or the exclusion, is sought
7 to be completely minimized or nullified. And therefore, my submission is, in this light, if we
8 both, identify, define 'Industry', then we don't need any change from the definition, and
9 therefore, it can cover a wide range of work.

10 **CJI SURYA KANT:** Thank you, thank you, Madam. Thank you very much. Mr. Chauhan, do
11 you want to add anything?

12 **K.S. CHAUHAN:** Yes. May I please, My Lords? The State is obliged to carry out welfare
13 activities as mandated under scheme of Part 4, 'Directive Principles of State Policies'. The
14 Union as well as State, they have argued that the workers who are workmen which is defined
15 by Section 2(s), are working in the Industry which is defined by Section 2(j), the Industries
16 which are performing governmental functions, they want that those Industries should be
17 declared as 'sovereign functions' and the workers working there, they should not get the
18 Labour Law rights, My Lord. This is the sum and substance of their argument. Firstly, Part IV
19 of Constitution is for the weaker sections to protect their rights, My Lord. So in the garb of
20 applying directive principles for the welfare of have-nots, the State cannot ride on the
21 shoulders of the other have-nots, depriving them of their legitimate rights, while ensuring
22 DPSPs for one set of have-nots. And the State cannot deny and deprive another set of have-
23 nots. That is the basic principle which, My Lord, this Honourable Court should consider. The
24 Industrial Disputes Act, My Lord, is enacted at a time, we were not independent at that stage
25 of time. And the definition, Section 2(a) which define 'Appropriate Government', it recognised
26 Central Government entities and the Central Government has been declared as the
27 appropriate government.

28 Though Section 2(a) has been read, My Lord, after our independence we got Fundamental
29 Rights, we got Directive Principles. So, any interpretation which this Court is giving today,
30 should take into account the changed circumstances, because, at that time, these rights were
31 not there. These Directive Principles were not there, but still these Directive Principles and
32 Fundamental Rights, which have come by way of our Constitution, they should be protected
33 and preserved by this Honourable Court.

34 The industries which are mentioned in Schedule 1 of this Act, My Lord, as Mr. C.U. Singh has
35 explained a little bit, so those 'Industries' are all government 'Industries'. So, the way the

1 interpretation is being asked by the Appellants of Central Government, or the State
2 Government, My Lord, that is contrary to the scheme of the Act. The scheme of the Act require
3 that there should be Industrial peace. To maintain that Industrial peace, the workers and the
4 Industry and their rights have to be harmonised, My Lord. And there is a scheme in the Act,
5 according to which, if the Industries maintain certain rights, these rights are maintained, then
6 there will be Industrial peace, My Lord. There are situations, when in those situations, the
7 lockout and other problems arise in the Industry. This Act was enacted to take care of that
8 situation. Suppose, My Lords decide that these are 'sovereign functions', then these workers
9 will have no rights. Firstly, they will have no rights. Secondly, suppose, they will have rights in
10 Civil Court, although that is barred, but if they are going then that is not a full remedy, My
11 Lord. Then if they go to High Court, My Lord, the High Court also... then a function which is
12 discharged by Labour Court at a lower level will be discharged by High Court. And in this
13 manner the functioning of the High Court will be affected. And the Judicial Review which is
14 the basic feature of our Constitution My Lord, and that the common man who is coming
15 directly to the High Court without any alternative remedies, in that situation My Lord, the
16 remedies which are not available to the workers, there'll be unrest and opinion against the
17 Constitutional Courts, My Lord.

18 So, with respect My Lord, I contend that the Court should take into account that the High
19 Court dockets are not clogged so that the workers may have a remedy. That remedy...

20 **CJI SURYA KANT:** We got your point, Dr. Chauhan. According to you, the denial of
21 platforms under the ID Act will ultimately compel them to approach the High Court under
22 Section 26 also...

23 **K.S. CHAUHAN:** Yes, My Lord.

24 **CJI SURYA KANT:** ...and that it will amount to denial of access to justice.

25 **K.S. CHAUHAN:** Yes, My Lord. Like this Parliament has enacted Administrative Tribunal
26 Act. Earlier there was a direct SLP to this Honourable Court. Then this Honourable Court has
27 to decide *L. Chandra Kumar*, My Lord. Thereafter, the jurisdiction of the High Court has
28 been created for those cases. So, there are situations where this Honourable Court has to take
29 into account the Directive Principles. Like in Article 38 there is a mandate to the State to secure
30 social order for the promotion of the welfare of the people, My Lord. So, as Ms. Jaising has
31 stated to this Honourable Court, all the Parties who are ruling in this country, their
32 government have taken a stand against the workers. The workers who are discharging the
33 essential functions, because without them the industries can't work. And, if the industries can't
34 work then that type of situation which we are creating in the society will affect the social

1 harmony in general also. Not only in the industrial peace, but in general also there will be there
2 will be disturbances.

3 Then Article 39(e) provides the workers should not be forced by economic necessity to enter
4 avocations unsuited to their age and strength. So, if there is no alternative remedy, then the
5 workers, they are getting some pay which is lower than the minimum wage. They will have no
6 remedy. Some worker are getting higher pay, some worker are getting less pay, so there will
7 be disparity in the pay. There will be no remedy for them to approach to a court, My Lord or
8 in the Industrial Tribunal. Then My Lord, there are Directive Principles which mandate the
9 State to carry out the welfare activities. These welfare activities cannot be considered in such
10 a way that one set of the people they will get that benefit by denying another set of the people.
11 And, such obligations, which are obligation of the State, those obligations cannot be
12 minimized. Because whatever resources are there with the State, with those resources it is their
13 bounden duty under the scheme of the Constitution to ensure them those dignified rights, My
14 Lord.

15 Then, My Lord, in the *Bangalore Water Supply*, only three, four paragraphs I wanted to
16 explain.

17 **CJI SURYA KANT:** You can point out the paragraphs. We have already read that judgement
18 many times.

19 **K.S. CHAUHAN:** Yes. My Lord, Justice Krishna Iyer's para 140 to 144.

20 **CJI SURYA KANT:** Yes.

21 **K.S. CHAUHAN:** And Justice Beg's Judgment, My Lord. Para 160, My Lord.

22 **CJI SURYA KANT:** 160?

23 **K.S. CHAUHAN:** 160 and 163, My Lord.

24 **CJI SURYA KANT:** All right.

25 **K.S. CHAUHAN:** And Justice Chandrachud's Judgment, 178, My Lord.

26 **CJI SURYA KANT:** 178, yes. Today only you read before us, yes.

27 **K.S. CHAUHAN:** And, My Lord this dissenting judgment is also not completely dissenting
28 My Lord, because that is practically concurring only, some explanation is there.

29 **CJI SURYA KANT:** Go to para 185.

30 **K.S. CHAUHAN:** 185, 186 My Lord. So far as the Triple Test is concerned, My Lord and the
31 new legislation, which my Lord are not testing today, in whatever evolved in *Bangalore*

1 **Water Supply**, in the new Act, those industries have been placed in exception. So there will
2 be no rights, My Lord. My Lords have to interpret in such a way that My Lord, suppose it is a
3 charitable institution, then there are certain functions which are charitable and if that
4 charitable institution is working as Industry, those fair should be excluded and they should
5 not be a part of the charitable institutions, My Lord. With all this, My Lord, I concur with Ms.
6 Jaising and Mr. C.U. Singh because they have covered all the areas. And I personally feel that
7 the **Bangalore Water Supply** is correctly decided with this interpretation because the
8 charitable and other things which they are excluding My Lord, I hope this Honourable Court
9 will consider it in such a way that the rights of the worker will not be marginalized in the future
10 legislation, though it is in action now. And those rights which are created by that legislation
11 should protect the dignity of the workers working and they should have an alternative
12 mechanism to go to a adjudicatory authority or a Industrial Tribunal. With this I am grateful
13 to My Lord for this.

14 **CJI SURYA KANT:** Thank you. Dr. Chauhan. If any one line you can add.

15 **ASHOK KUMAR:** I will add only one thing, My Lord. My Lordships are considering the
16 definition of Industry, where the aspects have been taken from the Industrial side. My Lord,
17 the point is the nature of work performed by the workmen has to be taken and for that purpose,
18 and the immunity Your Lordships, two things. For that purpose, My Lord, I have found a
19 judgment of the Supreme Court. I will circulate it. In that, the immunity has to be seen vis-a-
20 vis here one...

21 **CJI SURYA KANT:** You [UNCLEAR] like this.

22 **ASHOK KUMAR:** Just explain one thing. Here the lady was working in an embassy in the
23 United Kingdom. There the lady's services were terminated, My Lord. So the court went into
24 the nature of the work, what work she was performing and whether they were connected with
25 the immunity or not. Because the authority claimed the immunity. So in that purpose, the
26 court went to the nature of work of the workmen and for that purpose may I circulate the
27 judgments, Your Lordships? If Your Lordships want me, I will read, otherwise...

28 **CJI SURYA KANT:** You can circulate it along with a brief note. And please first you read it
29 and identify the relevant paragraph and then circulate with the note. We will definitely go
30 through it. Yes, anything else?

31 **SHIVAM SINGH:** Yes, Your Lordship.

32 **CJI SURYA KANT:** Yes.

33 **SHIVAM SINGH:** Yes, Your Lordship. Your Lordship, I'll take a little more time.

1 **CJI SURYA KANT:** One line only. Not more than that.

2 **SHIVAM SINGH:** I'll just take a few minutes, Your Lordships, I'm conscious of the limitation
3 of time. Your Lordship, the main issues that I'm seeking to raise, although have been covered
4 *in extenso* by my senior colleagues, there's just one aspect which I wish to invite Your
5 Lordships attention to and that in my respectful submission, will have some bearing on the
6 matter. Your Lordship, the Industrial Disputes Act, which we are concerned with, is traceable
7 to entry 24 of List 3, Your Lordships. Whereas all other statutes which have been ancillary
8 referred to in this particular course of hearing, are traceable at best, to entry 2024 of the list,
9 Your Lordships, particularly shops and establishments. Of list 3, Your Lordships, of mainly
10 the Shops and Establishments Act. So, it is my respectful submission on two aspects, first Your
11 Lordships, that this, that the Industrial Disputes Act, which is a pre-independence act, a few
12 months prior to independence, came in April 1947. The legislature was absolutely clear and
13 the Constituent Assembly debates also reflect that intention, that this is within a standalone
14 silo that they have placed it. And they have not sought to then place any other act, such as the
15 Shops and Establishments Act, which has come for different states in different years. They
16 have not sought to place it in that particular way so that they are clear in their understanding
17 that the Industrial Disputes Act with a standalone entry will cater to all of this, that's argument
18 number one, Your Lordships. The argument number two in this extension, that I wish to make,
19 is, that the Industrial Disputes Act should not be seen as overlapping in any manner, but
20 supplementing the cause. And therefore, to that extent, when the States are *ad idem* in arguing
21 that, "please do not have these workers move towards the Industrial Disputes Act", there are
22 equally efficacious remedies which are available under different statutes, which are available
23 under different enactments, that argument in my respectful submission, needs to be rejected
24 at the outset.

25 Your Lordships, just building on that, and there were two observations which fell from the
26 Bench; and I'll just address it quickly on that aspect, and I'll leave it at that, Your Lordships.
27 The States are *ad idem* and particularly advancing this argument, that please do not have the
28 worker opt for the ID Act. The worker can opt for the Shops and Establishment Act. The worker
29 can opt for Writ Remedies, etcetera, etcetera. And there were observations which fell from
30 Your Lordships, and I believe that those are answer, and those are responses enough in this
31 matter, Your Lordships.

32 The first argument is, that writ remedies should not be treated as appropriate courses of action
33 as articulated by the Bench itself, on Day-2 of the hearing, Your Lordships, is that because,
34 first of all, disputed questions of fact will not be adjudicated into. Secondly, the practical
35 limitation which will come about, and Your Lordships know with over 100 years of experience
36 on the Bench, Your Lordships, cumulatively, that once this argument is made available to the

1 State, the workers will then be compelled to argue on preliminary objections that whether this
2 is maintainable or not; and even if they move beyond that, Your Lordships, then the queries
3 which will come is, that, our public functions being performed, are these public functions not
4 being performed, what is the nature, etcetera. So these arguments will always deprive the
5 workers of arguing on the core merits of the matter as opposed to the main meat of the matter.

6 Your Lordships, just one last argument in this regard is that, what I'm seeking to advance is
7 that, the State is coming up with the argument, that Writ Remedies will be an appropriate
8 course of action; and that in my respectful submission, runs contrary to what is the consistent
9 legislative effort across several years, as recent as this year, Your Lordships, is that this
10 legislature is creating an effort to ensure that more and more specialized Tribunals, more and
11 more cases go before these Tribunals with expertise, whereas the State is arguing, that, "no,
12 those which are working just fine, please take it away from them, please come to the High
13 Courts". That in my respectful submission, would add to the already burgeoning judicial
14 docket as opposed to streamlining the issue.

15 And last argument, Your Lordships, and this is a matter of abundant caution, because all my
16 colleagues... all my senior colleagues have already flagged this. Your Lordships have indicated
17 during the previous sessions that Your Lordships would consider adding a Clarificatory caveat
18 that, number one, this operates prospectively. And number two, that the 2020 Act will be
19 adjudicated on its...

20 **CJI SURYA KANT:** We have not promised anything but we are only entertaining the
21 arguments.

22 **SHIVAM SINGH:** Yes, Your Lordship. So my respectful submission is that Your Lordships
23 may lean towards that, because the 2020 Act, if Your Lordships were to adjudicate on that,
24 then the possibility of a Nine-Judge or an Eleven-Judge Bench assembling to revisit that, is
25 perhaps remote, in my respectful submission. So my respectful request would be, that Your
26 Lordships may not comment on the 2020 Act; and leave all questions of law to be adjudicated
27 at the appropriate time.

28 **CJI SURYA KANT:** Okay, thank you.

29 **SHIVAM SINGH:** I'm very grateful for your patience.

30 **SANGEETA BHARATI:** Just one minute, My Lord. I'm an individual workman, whose
31 services were terminated, and I've been now reinstated with full back wages. I'm just reading
32 the bullet points of my Note. The first point that I wish to make is, there is a clear distinction
33 between 'sovereign functions' and the 'welfare activities' which are performed by the State.

1 Only 'sovereign functions' would qualify for exemption and not the 'welfare activities'. And
2 more specifically with respect...

3 **CJI SURYA KANT:** Where were you working?

4 **SANGEETA BHARATI:** Irrigation Department of the State of Punjab. I was a *baildaar*, I
5 was doing the work, manual labour. Sorry, My Lords?

6 **CJI SURYA KANT:** What is the age now?

7 **SANGEETA BHARATI:** He has expired, so I've impleaded the legal heirs. During the
8 pendency of the case he expired.

9 **CJI SURYA KANT:** What is the number of your case?

10 **SANGEETA BHARATI:** 812 of 2005, My Lords.

11 **JUSTICE B.V. NAGARATHNA:** What is the objection raised?

12 **SANGEETA BHARATI:** Irrigation department is not an 'Industry' and the Labour Court
13 and the High Court held in my favour, but I could not get the benefit because the matter got
14 tagged.

15 **CJI SURYA KANT:** Who is for the State of Punjab?

16 **SANGEETA BHARATI:** Mr. Farasat.

17 **CJI SURYA KANT:** What is the number of your case?

18 **SANGEETA BHARATI:** 812 of 2005.

19 **CJI SURYA KANT:** Take this SLP.

20 **SANGEETA BHARATI:** Civil Appeal. Civil Appeal.

21 **CJI SURYA KANT:** Civil Appeal number so and so. Heard Mr. Shadan Farasat speak on
22 behalf of the State of Punjab. Claim granted. Heard Mr. Shadan Farasat on behalf of the
23 Appellant as well as...

24 **SANGEETA BHARATI:** Sangeeta Bharati.

25 **CJI SURYA KANT:** On behalf of the legal representatives of the deceased workmen keeping
26 the question open as to whether the Irrigation Department of State of Punjab is an industry or
27 not within the meaning of Section 2(j) of the Industrial Disputes Act 1947. However, having
28 regard to the fact that the workman was that the deceased Respondent was engaged in the
29 year?

- 1 **SANGEETA BHARATI:** He was in the year...
- 2 **CJI SURYA KANT:** In the year so and so...
- 3 **SANGEETA BHARATI:** The award is of 2002. So, My Lords...
- 4 **CJI SURYA KANT:** ...in 2002 and after serving for more than...
- 5 **SANGEETA BHARATI:** No he didn't serve for... we fulfilled 240 days, My Lords. He was
6 working as a *baildaar*.
- 7 **CJI SURYA KANT:** And while languishing before one or the other judicial form, has
8 unfortunately passed away, leaving behind his legal representatives who have no source of
9 livelihood. Somehow we deem it appropriate to invoke all powers under Article 142 of the
10 Constitution and dismiss this appeal.
- 11 **SHADAN FARASAT:** My Lord, just a legal question. We are only on the legal question, My
12 Lord.
- 13 **JUSTICE B.V. NAGARATHNA:** He's asking for regularization?
- 14 **SHADAN FARASAT:** No, no, My Lords, he wanted to claim... he wanted to claim continuity
15 in service as a workman, but since it was not an industry, the Irrigation Department, that's
16 why we have come in appeal. But we are only on the legal question. On the facts, I don't have
17 any difficulty.
- 18 **CJI SURYA KANT:** Invoke all powers under Article 142 of the Constitution and
19 consequently dismissed this appeal. The legal heirs of the deceased employee shall be entitled
20 to all the consequences [UNCLEAR].
- 21 **SANGEETA BHARATI:** Your Lordship may fix a time frame?
- 22 **JUSTICE B.V. NAGARATHNA:** Yes, according to you, he could not have been terminated.
- 23 **SHADAN FARASAT:** That's right.
- 24 **SANGEETA BHARATI:** Yes, My Lord. He was retrenched under 25F.
- 25 **JUSTICE DIPANKAR DATTA:** Did he mark...
- 26 **SHADAN FARASAT:** Only 240 days.
- 27 **SANGEETA BHARATI:** 240 days, My Lord.
- 28 **JUSTICE DIPANKAR DATTA:** How many years? 240 days in a year. How many years did
29 he put in 240 days?

- 1 **SANGEETA BHARATI:** My Lords, I don't have those details. My Lord, his services were
2 terminated and therefore we asked for continuity of service.
- 3 **CJI SURYA KANT:** No, apart from reinstatement in service you said he...
- 4 **SANGEETA BHARATI:** Yes, My Lord.
- 5 **CJI SURYA KANT:** ...completed 240 days.
- 6 **SANGEETA BHARATI:** He had completed 240 days...
- 7 **CJI SURYA KANT:** ...was not given... there is a violation of 25F.
- 8 **SANGEETA BHARATI:** Yes, My Lords.
- 9 **SHADAN FARASAT:** That's their case. That's their case.
- 10 **SANGEETA BHARATI:** Their objection was only that Irrigation Department is not an
11 industry.
- 12 **SHADAN FARASAT:** My Lords, he was taken in service in August 3rd, 1995 and termination
13 was July 20, 1997, so just about less than two years.
- 14 **JUSTICE B.V. NAGARATHNA:** 1997...
- 15 **SHADAN FARASAT:** August 3rd, 1995 to 20th July, 1997.
- 16 **CJI SURYA KANT:** It will prove all the consequential benefits, including areas of pay on the
17 premise that the deceased had been reinstated in service, and he continued to work till he died.
- 18 **SANGEETA BHARATI:** My Lords may just fix a time frame, four weeks or six weeks
19 whatever.
- 20 **JUSTICE B.V. NAGARATHNA:** When did he die?
- 21 **SHADAN FARASAT:** My Lords, death, I'm not sure.
- 22 **JUSTICE DIPANKAR DATTA:** The [UNCLEAR] have not been brought on record?
- 23 **SANGEETA BHARATI:** No, no, they have been brought on record.
- 24 **SHADAN FARASAT:** My Lords, I'll just have to check. Yes, yes, I'll have to check.
- 25 **CJI SURYA KANT:** Death Certificate you mentioned is there. I just saw it somewhere. I will
26 just point out I have seen my chart... I remember better than...
- 27 **SHADAN FARASAT:** My Lords, we will give the date. Your Lordships need not hold the
28 Court for that, we'll give the date.

- 1 **CJI SURYA KANT:** Please give us the date...
- 2 **SANGEETA BHARATI:** While the matter was pending in the Supreme Court he died, My
3 Lords.
- 4 **SHADAN FARASAT:** My Lords, 25th of December 2020 is the date of death. 25th
5 December, 2020.
- 6 **SANGEETA BHARATI:** While the matter was pending in the Supreme Court.
- 7 **JUSTICE B.V. NAGARATHNA:** What age?
- 8 **SANGEETA BHARATI:** I didn't anticipate, My Lords...
- 9 **JUSTICE B.V. NAGARATHNA:** How much of service he would have had from 1997
10 onwards?
- 11 **SANGEETA BHARATI:** Maybe 15 years more... around 20 years of service. 1995 to 1997.
- 12 **SHADAN FARASAT:** My Lords, 23 months was his period of work.
- 13 **JUSTICE B.V. NAGARATHNA:** So what should be the...?
- 14 **SHADAN FARASAT:** I will leave that to the court, My Lords.
- 15 **SANGEETA BHARATI:** Very well, My Lords.
- 16 **CJI SURYA KANT:** He has died then say, we are of the considered opinion that the legal
17 heirs of the deceased employee are entitled to a lump sum amount of compensation, invoking
18 our powers under 142 of the constitution. We grant lumpsum amount rupees 10 lakh to the
19 legal representative...
- 20 **SANGITA BHARTI:** Grateful, My Lord.
- 21 **CJI SURYA KANT:** The amount shall be deposited with the Tribunal within six weeks. The
22 Tribunal shall identify the elders of the deceased and will disburse the amount proportionate.
- 23 **SHADAN FARASAT:** Keep the appeal only for the question of law. Factually My Lords may
24 dispose it. We are also only pressing question of Law.
- 25 **SANGITA BHARTI:** I'm deeply grateful.
- 26 **CJI SURYA KANT:** Now, so from the Respondent's side is over. Mr. Cama, would you like
27 to now start or we allow 10 minutes?
- 28 **R. VENKATARAMANI:** After the *amicus* concludes, I thought let me come at the end.
- 29 **CJI SURYA KANT:** Yes Mr. Cama, please.

1 **JAMSHED P. CAMA:** My Lords, in the presence of so many eminent counsels I'm a little
2 apprehensive. But having said that...

3 **RESPONDENT'S COUNSEL:** I have given a note Your Lordship, additional submission of
4 17th of March. I am appearing in six matters for the... and the opposite side is Department of
5 Forest Your Lordship. I am only requesting that Your Lordship may take note of my written
6 submissions and the written submissions, actual written submissions are part of Volume II.

7 **CJI SURYA KANT:** Alright, we will take it.

8 **RESPONDENT'S COUNSEL:** And Your Lordships may also consider Article 38(2), Article
9 14 and Article 43A of the Constitution while deciding the issue, Your Lordships. That's all.

10 **JUSTICE B.V. NAGARATHNA:** What was the relief you sought? For regularization?

11 **RESPONDENT'S COUNSEL:** Your Lordship, yes. Your Lordship, regularization in two
12 cases it was about pay scales, Your Lordship, there are five, six cases. So there are different
13 issues Your Lordship. Please, Your Lordship. In three cases Department of Forest is there, in
14 one case ITI college is there and in two cases, Zilla Parishad is there.

15 **CJI SURYA KANT:** Alright.

16 **JAMSHED P. CAMA:** My Lords, as I see it, this is an all or nil litigation. The other side says
17 include all and this side says, 47 of them say, that our individual establishment should not be
18 covered. So this is a peculiar litigation as I said, it's an all or nil litigation. Now I want to clarify
19 my position. First of all as to industry in the hands of government, I think there can be no
20 doubt that industry in the hands of government makes no difference. Industry is industry, but
21 the industry must ultimately come within the element of 2(j). It must be a factory or business
22 or an undertaking. Now, the other day My Lords had asked, what is the undertaking? Whether
23 undertaking would be different or not? The answer to that is in three or four passages of the
24 Industrial Disputes Act. First is 2(ka). Can I just take Your Lordships through that? 2(ka) says
25 "Industrial establishment or undertaking means an establishment or undertaking in which
26 any industry is carried on." So an undertaking is also an enterprise which is industrial in its
27 nature, it's not separate. Now if it was separate there would be a major problem for the
28 workers. If you turn down and see Section 25F, 25F is retrenchment. It refers only to the word
29 'undertaking', I'm sorry, 25FF. FF is where business is transferred. So undertaking there is
30 obviously relating to Industry. It refers to the fact that an undertaking which are of industrial
31 nature is transferred, but the section does not refer to the word Industry *per se*.

32 Similarly in 25FFF closure, it refers to 'undertaking' and therefore 'undertaking' must mean
33 'Industrial'. Now, this position also came up before Your Lordship's Court, in the context of
34 Section 25-O, there it referred to an 'undertaking of an establishment'. So this Court said, "an

1 undertaking of an establishment must mean a separate unit of that establishment." An
2 undertaking is an... it is 'Industry'. It's either the whole 'Industry' or it's a part of the 'Industry',
3 and it must be read *ejusdem generis*. It must be read in conjunction with the words preceded
4 and subsequent to it. If everything else around it is 'Industry', then surely one word cannot by
5 itself stand out. As a matter of interest, while contemplating 'workmen', a Constitution Bench
6 of this Court had to consider whether sales representatives would come within the ambit of
7 'workmen'. And they said, "no, we'll read the entire definition of Section 2(s) as one section",
8 and having said so, a mere medical sales representative is neither manual nor technical, nor
9 clerical, nor supervisory. So, they said, "we will read all these words together and we'll come
10 to a joint decision". So, therefore, in any law, a number of words in one collocation has to have
11 the same meaning. I trust, My Lord that takes care of that. I pointed out that there was a
12 judgment of this Court, I'll just hand it across. It's in Volume VI of Your Lordship's
13 compilation. Point 1 in Volume VI. My Lords have that? Then kindly come to para 16 or 15
14 rather. 15, 16 and 22.

15 **JUSTICE B.V. NAGARATHNA:** 1986?

16 **JAMSHED P. CAMA:** 15 will be at page 641.

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Volume VI?

18 **JAMSHED P. CAMA:** Volume VI. Do all My Lords have this now? Sorry. Do all My Lords
19 have it now? If Your Lordships would turn to, as I said, para 15 at page 641. It's at Section 25-
20 O, 'Closure', I'm reading 15, My Lords.

21 **CJI SURYA KANT:** Yes, yes.

22 **JAMSHED P. CAMA:** "Section 25-O applies to the closure of 'an undertaking of an
23 industrial establishment' and not to the closure of an 'industrial establishment'. Section 25-L,
24 however, defines only the expression 'industrial establishment' and not the expression 'an
25 undertaking of an industrial establishment'. It also does not define the term 'undertaking'.
26 Section 25-L does not require the 'undertaking of an industrial establishment' should also be
27 an 'industrial establishment', or that it should be located in the same premises as the
28 'industrial establishment'. The term 'undertaking', though it occurs in several sections of the
29 Industrial Disputes Act, as for example Section 25-FF, FFA and FFF, is not defined anywhere
30 in the Act. Even a new Clause K, which was inserted in Section 2 of the amended Act of 1982,
31 defines the expression 'industrial establishment or undertaking' and not the term
32 'undertaking' simpliciter. It would appear, from the opening words of Clause K, namely
33 'industrial establishment' or 'undertaking' means an 'establishment undertaking', in which any
34 'industry' is carried on. The term 'undertaking' in the definition, applies to an 'industrial

1 undertaking'. It would thus appear that the word 'undertaking', wherever it occurs in
2 Industrial Disputes Act, unless a specific meaning is given to the term, by that particular
3 provision, is to be understood in its ordinary meaning and sense. The term 'undertaking'
4 occurring in Section 25FFF fell for interpretation by this court in **Hindustan Steel.**" In para
5 10, the Court held, "the word 'undertaking' as used in Section 25FFF, seems to us, to have been
6 used in its ordinary sense, connoting thereby, any 'work', 'enterprise project' or 'business
7 undertaking'. It is not intended to cover the entire 'industry' or business of the employer, as
8 was suggested on behalf of the Respondent. Even closure of a stoppage of part of the business
9 or activities of the employer, would seem, in law, to be covered by this subsection. The question
10 has indeed to be decided on the facts of each case". Para 16, "It is thus clear that the word
11 'undertaking' in the expression and 'undertaking of an industry establishment' in Section 25-
12 O, means an 'undertaking' in its ordinary meaning and sense, as defined by the Court in
13 **Hindustan Steel.** If an undertaking in its ordinary meaning and sense is a part of the
14 industrial establishment so that both taken together constitute one establishment, Section 25-
15 O would apply to the closure of the undertaking provided the condition laid down in 25K were
16 satisfied."

17 Now, this was a case where the doctrine of functional [UNCLEAR] was involved. The question
18 was whether the factory and the head office should be linked together. Was it a separate
19 undertaking and the Court said no because the factory could not survive without the head
20 office. So therefore, it was considered to be one undertaking. The undertaking means
21 industrial. And it appears in the collocation of words in 2(j). So therefore, it must be given that
22 meaning. It can't be given a totally independent meaning.

23 Now coming to the rival situation... I'm sorry, can I just take Your Lordships very briefly into
24 the Act, because when you interpret a Section, you have to look at the Act. Now the Act, certain
25 Sections of the Act are relevant for Your Lordships' consideration. First, is Section 2(k). Do all
26 My Lords have 2(k)? "Industry..." I think My Lords have heard by now "...means business or
27 undertaking, trade or undertaking, manufacturing or calling employees and includes any
28 calling service, employment, handicraft, industrial occupation, avocation." I want Your
29 Lordships to understand that this definition is in two parts. It is not just one continuous
30 definition. "In the context of an employer, it means business, trade, undertaking,
31 manufacturer or calling of employers and includes any calling, service, employment,
32 handicraft or industrial occupation or avocation of workmen." So there are two separate parts
33 of the same definition. This is relevant because in **Banerji's** case, this Court concluded that
34 the length and strength of the definition was reinforced by the second part. The second part
35 therefore had no part to play in the first part.

1 Now, if you turn to the word 'industrial dispute' that is at Section 2(k). Do My Lords have 2(k)?
2 2(k) says, "Industrial Dispute: means any dispute or difference between employers and
3 employers, or between employers and workmen, or between workmen and workmen, which is
4 connected with the employment or non-employment or the terms of employment or with the
5 conditions of labour." So, it is a dispute between employers and employers, employers and
6 workmen or between workmen and workmen. So, industrial dispute comes... I mean that is
7 how you read Section 2(j) of industry. Industry means a dispute between workmen and
8 workmen as much as it means a dispute between workmen and the employer. So, that must
9 be clearly understood.

10 Now we come now to the question as to whether all and all and every employment is in
11 industry. My learned friends on this side would like to say that everything is included in
12 industry, including a charitable organization. I agree with them except for the word 'charity'.
13 As far as charity is concerned pure and simple charity, government supplying milk to work
14 people, government giving free education. That is not industry. But short of that, anything
15 where there is a employer and employee engaged in that... in an activity which involves an
16 industry would be covered. So, I'm on with my learned friends in totality on the question of
17 coverage. To mind, therefore it is not what, it is the who of the... the who of the matter is not
18 relevant, it is the what of the matter. Who can be anybody, whether it's a government or
19 otherwise. Now the only question will arise in the case of regal functions whether regal
20 functions could be covered by this aspect. I would submit that if regal functions can be divided
21 into industrial and pure regal, it is possible for the court to take the view that the purely
22 industrial as opposed from the purely regal functions are included. It is interesting to note that
23 today even in Defence you have the Armed Forces Act. So even though that's a strictly a regal
24 function of the government, still people are able to go to court. So therefore, regal by itself to
25 my mind may not be a complete ouster. If there is an element in the regal function which
26 involves an employer-employee relationship, then it is possible to conclude that even that is
27 included within the concept of Industrial Disputes Act. However, in the case of Defence, since
28 the Armed Forces Act is there, the Industrial Disputes Act will not be drawn in. I'm just
29 drawing an analogy.

30 Now, if you turn back to 25(ka) for a moment... Sorry 2(ka), my apologies.

31 **JUSTICE B.V. NAGARATHNA:** Why do you say that if free education is provided by the
32 government, then it has to be excluded from the definition?

33 **JAMSHED P. CAMA:** Because the concept of charity and the concept of industry are
34 basically antithetical. Pure charity is not industry, it can't be industry.

35 **JUSTICE B.V. NAGARATHNA:** Structure is the same.

1 **JAMSHED P. CAMA:** Structure maybe the same. As I said, structure is not relevant point.

2 **JUSTICE B.V. NAGARATHNA:** Be it a private school or a government school.

3 **JAMSHED P. CAMA:** It is the object of the action. If the object is not to benefit the
4 government or to benefit a department of the government, and they are not charging fees, then
5 it's not an industry by its very word. To my mind, there has to be... There's something more
6 than charity in an industry. Now I have an issue with Justice Krishna Iyer's Triple Test also.
7 I'll come to that because ultimately that was the question My Lord raised before us, and apart
8 from one or two of our learned friends, nobody has really addressed that, I'll come to that in a
9 moment.

10 **JUSTICE B.V. NAGARATHNA:** For education purposes now there is Education Act of the
11 States, they go to the Education Tribunal. They have a separate Tribunal.

12 **JAMSHED P. CAMA:** No, that is alright, but they won't come under ID Act.

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

14 **JAMSHED P. CAMA:** That's my submission, because to my mind it is antithetical to
15 industry.

16 **JUSTICE JOYMALYA BAGCHI:** Mr. Cama, so your argument, if I've correctly understood,
17 is to enlarge the restrictive import of paragraphs 109 and 110 of Justice Iyer's judgment. There
18 are three categories A, B and C.

19 **JAMSHED P. CAMA:** I will restrict it, I will not enlarge it, when I come to it.

20 **JUSTICE JOYMALYA BAGCHI:** You will restrict it.

21 **JAMSHED P. CAMA:** I will restrict it, I'm sorry...

22 **JUSTICE JOYMALYA BAGCHI:** That's what I'm saying, that Justice Iyer says only Clause
23 C would be carved out of the definition of industry. You would include, perhaps B, as a
24 charitable object.

25 **JAMSHED P. CAMA:** Yes. But a pure charity as I said, I'm defining a pure charity from a
26 charity where you charge money. And where you charge money, there is to my mind, an
27 industrial element. But where you don't charge a pie and you do it in...

28 **JUSTICE JOYMALYA BAGCHI:** If I can clarify on, Clause A says, it's an institution which
29 is run on business lines but ploughs back the surplus into altruistic activity. Would you define
30 that as...?

1 **JAMSHED P. CAMA:** My Lords, I would take that as out of the Act because whether the
2 action will be done directly by the government or it is done by ploughing back, but if the
3 ploughing back is in the form of fees or if the ploughing back is in the form of a revenue return,
4 then it is an industry. But if it is ploughed back on its own without taking it as income, to my
5 mind here, the test would be income. I don't know how Your Lordship's illustration would...
6 how do you plough back? If you have a pure charity, the question which comes to my mind is,
7 how does one have a plough back?

8 **JUSTICE JOYMALYA BAGCHI:** I'm just using the words in paragraph 109, where Justice
9 Iyer says that the surplus is used for altruistic purposes.

10 **JAMSHED P. CAMA:** Your Lordships are talking about Industry and there is a surplus and
11 a surplus is used for altruistic purposes.

12 **JUSTICE JOYMALYA BAGCHI:** That will not be... That would definitely be an industry,
13 they are not a charitable...

14 **JAMSHED P. CAMA:** To the extent it is, like we do dominant theory, we'd have to apply the
15 dominant nature theory. If the dominant nature of the work is industrial, the fact that you
16 plough back a little bit into charity won't make it...

17 **JUSTICE JOYMALYA BAGCHI:** Then you are proposing that paragraph 185 of Justice
18 Jaswant Singh's is a better interpretation of that?

19 **JAMSHED P. CAMA:** I would think so, but then there's one difficulty there, there's
20 commercial requirement. Here, I'm not insisting on a commercial requirement. I'm only
21 saying if you are paying somebody something it may be purely altruistic, but you are paying a
22 workman to work for you in that altruistic activity and by that altruistic activity you are earning
23 a revenue, then the revenue which you earn is part of industry. Now, to my mind, if you just
24 pay somebody to do altruistic work and that altruistic work is pure and simple altruistic
25 without any commercial or other sense, then it is not Industry, that's my point.

26 Now My Lords, coming down to what my learned friends had argued, I'm sorry, I was showing
27 Your Lordships 2(ka), as my learned friend points out. Go back to that kindly, just to show
28 Your Lordships now, that not everything is an industry, not everything is an "industry". The
29 moment one speaks of dominant purpose, one realizes that there is something which is 'not
30 an industry' and something which 'is an industry', so...

31 **JUSTICE B.V. NAGARATHNA:** Test has to be applied.

32 **JAMSHED P. CAMA:** So, clearly, not everything in this country is an "Industry". Where I
33 find fault with Justice Iyer's four principles, or three principles, is that, he insists that it has to

1 be a management and employer relationship which brings about "Industry". I don't agree, and
2 I'll tell Your Lordships why I would recommend that Your Lordships also do not agree,
3 because, in any employment, even if it is purely altruistic, there might be a manager...
4 employer-employee relationship. So employer-employee relationship or master and servant
5 relationship cannot be the test. The test has to be two-fold. Actually the Act is very simple, we
6 have made it difficult. Test is simply this: is it "Industry" in the sense of the 4 or 5 words used
7 on top? If those 4 or 5 words are there, next question is, is the person employed there a
8 workman? Now, a workman is not anybody. He is manual, technical, clerical, supervisor. Now,
9 if you look at that category, you have to consider whether he is working or he comes within
10 that. Now, for example, a supervisor, over 15000, he is not a workman. Or if you have an
11 "Industry" where only sales representatives are there. They are not workmen under the
12 Constitution Bench Judgement. In that case, even if the "Industry" on top is business, it has
13 to be business dealing with workmen. And correspondingly, even if you have workmen, you
14 must have an "Industry". The two are coterminous. So, therefore, when you look at Section
15 2(j), there are two parts of 2(j); on the top itself separating it from workmen "industries". And
16 there is also the necessity to consider, whether the persons engaged in the "Industry" are
17 workmen.

18 **JUSTICE JOYMALYA BAGCHI:** So, sir, you say, the word "any employment of workman"
19 where the emphasis in the second part of the definition, is on the relationship between the
20 employer and the employee.

21 **JAMSHED P. CAMA:** That's right.

22 **JUSTICE JOYMALYA BAGCHI:** It's coloured by the nature of the 'undertaking' in which
23 the employment operates.

24 **JAMSHED P. CAMA:** It goes both ways. If the 'undertaking' is not a business, then the fact
25 that he's a workman will not make it an "Industry".

26 **CJI SURYA KANT:** It is irrelevant.

27 **JAMSHED P. CAMA:** Correspondingly, if it is an "Industry" in the sense of Section 2(i), but
28 the persons employed by them are not workmen.

29 **JUSTICE JOYMALYA BAGCHI:** So you say the word "and" has to be read conjunctively.

30 **JAMSHED P. CAMA:** No, I'm not on the word "and", I'm on the simple thing that
31 "Industrial" dispute as defined as a dispute between management and labour. Now when you
32 talk of management and labour, you obviously speak about "management" as defined, and you
33 speak of "labour" as defined. If either of those two elements is not there, it's not an "Industry",
34 it's not an "industrial" dispute.

1 **JUSTICE B.V. NAGARATHNA:** So Section 2(j) and 2(s) must coalesce?

2 **JAMSHED P. CAMA:** That's right, then only would it be an "Industry" and I'm emphasizing
3 this because, in Justice Iyer's three point test, I'll come to it in a moment. I don't agree with
4 him, because he is relying only on employer-employee relationships and that is in every
5 "Industry".

6 **JUSTICE DIPANKAR DATTA:** Mr. Cama, you are reading "undertaking" as a "business
7 undertaking"?

8 **JAMSHED P. CAMA:** Yes.

9 **JUSTICE DIPANKAR DATTA:** Look here, "undertaking" as far as my knowledge of English
10 goes, has different shades of meaning. One "undertaking" could be "establishment",
11 "enterprise". The second would be, what we write in our orders, somebody gives an
12 "undertaking" that he would comply. That is promise. Having regard to the previous and the
13 subsequent words of 2(j), why shouldn't "undertaking" be read as a venture?

14 **JAMSHED P. CAMA:** Because, Your Lordships are aware of the fact, that, when you read 4
15 or 5 words in one definition, they must have the same meaning. You can't have "Industry"
16 defined as "manufacturing" and "undertaking" as something totally different.

17 **JUSTICE DIPANKAR DATTA:** "Undertaking" could be said, in this sense, I have
18 undertaken this work, in that sense also it is "undertaking".

19 **JAMSHED P. CAMA:** But I am supported in my submission by reference to 25FF. Now, if
20 that was correct, then there can be no 'application for transfer', there can be no 'application
21 for closure'. If "undertaking" is not "Industry" itself, then under 25FF, who's being transferred,
22 who is doing the transfer, who is doing the...

23 **JUSTICE DIPANKAR DATTA:** The purpose of 25FF and 25FFF you have to borrow the
24 meaning from 2(ka).

25 **JAMSHED P. CAMA:** But that's also in the "undertaking". An undertaking in any
26 "Industry".

27 **JUSTICE DIPANKAR DATTA:** "Industrial establishment" or "undertaking", do we read
28 only "industrial establishment" and "undertaking" separately, or "industrial" has to be read
29 before "undertaking" also?

30 **JAMSHED P. CAMA:** The second line says that. The second line...

31 **JUSTICE DIPANKAR DATTA:** An establishment or undertaking.

32 **JAMSHED P. CAMA:** In an "Industry".

1 **JUSTICE DIPANKAR DATTA:** Right, in which "an Industry"?

2 **JAMSHED P. CAMA:** Has to be "an Industry".

3 **JUSTICE DIPANKAR DATTA:** Has to be, because, otherwise, the word "Industry" would
4 not have come before "establishment".

5 **JAMSHED P. CAMA:** That's right. So, I'm saying look at the entire Act. If you see the entire
6 Act the undertaking can't be anything different from what comes before and what comes after.
7 It would otherwise be a peculiar interpretation to say that in the definition Clause these two
8 words are covered by the definition. This one word is not and the next two words are.

9 **JUSTICE B.V. NAGARATHNA:** But they didn't apply the *noscitur a sociis*.

10 **JAMSHED P. CAMA:** They should have to apply that.

11 **JUSTICE B.V. NAGARATHNA:** They didn't apply it.

12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** They didn't apply it.

13 **JUSTICE B.V. NAGARATHNA:** They didn't apply it. For example, BSNL which deals with
14 telephones etc., is that an undertaking or is it trade, business, manufacture or calling of
15 employers?

16 **JAMSHED P. CAMA:** It is an undertaking.

17 **JUSTICE B.V. NAGARATHNA:** It's an undertaking, even though there is no manufacture.

18 **JAMSHED P. CAMA:** That's right, an undertaking can be the whole establishment or it can
19 be a part of an establishment, it can be the whole industry. Now for example, 25FF, as I
20 mentioned, it deals with the whole industry, in 25-O it deals with a part of the industry. So,
21 undertaking is industry, whether whole or part.

22 **CJI SURYA KANT:** Manufacturing is not one of the compulsory or mandatory essential of
23 an industry.

24 **JAMSHED P. CAMA:** I'm sorry?

25 **CJI SURYA KANT:** Manufacturing...

26 **JAMSHED P. CAMA:** It can mean trade also. I mean calling either of them any of the... any
27 of the top line. Now therefore, once we have understood that an industry and a workman had
28 to be read together, and once we have understood that not every employment is an industry,
29 we have to then test what is meant by industry. Now, industry has to have a common sense
30 meaning. The legislature does not legislate with an Oxfordian purpose. It legislates common
31 understanding. Now, when you say trade, or business, or manufacturing, what did the

1 legislature mean? It had to mean industry must mean these things. It must be. There's no
2 other... there's no other meaning to the word 'industry'. Let us read what is industry together.
3 "Industry: business, trade, undertaking, manufacture or calling." Now, in order for it to be an
4 industry it has to be one of these. What Justice Iyer does, he says I'm not concerned with
5 whether or not it's an industry. I am saying that any and every person who engages in a
6 relationship with an employer is industry.

7 **JUSTICE B.V. NAGARATHNA:** That is too wide according to you.

8 **JAMSHED P. CAMA:** Far too wide, far too wide. Now, in this context, let's go back to Justice
9 Iyer's judgement. Have a look at that. It's at page... paragraph 140 of the Judgement. Do My
10 Lords have that, Justice Iyer's judgement in hand? It is My Lords in Volume V, point 35, para
11 140.

12 **CJI SURYA KANT:** 140.

13 **JAMSHED P. CAMA:** Page 2147 in the Volume. I don't know in the computer if it is
14 otherwise.

15 **CJI SURYA KANT:** It's 5B.

16 **JAMSHED P. CAMA:** 5B. It's Volume V point 35.

17 **JUSTICE DIPANKAR DATTA:** Which paragraph of *Bangalore*?

18 **JAMSHED P. CAMA:** 140.

19 **JUSTICE DIPANKAR DATTA:** 140.

20 **JAMSHED P. CAMA:** My Lords have 140? Let's read together. If... I mean I'm sure Your
21 Lordships are tired of reading this by now, but let's read it together one more time. "Industry
22 as defined in Section 2(f) and (j) and explained in *Banerji* has a wide import. Where systemic
23 activity organized by a cooperation between employer and employees, the direct and
24 substantive element is chimera, for the production and distribution of goods and services
25 calculated to satisfy human wants and wishes, but inclusive of material things or services
26 geared to celestial bliss. Example, making on a large scale *prasad* or food, *prima facie* the
27 industry. Absence of profit motive or gainful objective is irrelevant." I don't agree. How can
28 there be a trade or a business which doesn't have a profit motive? It may be that a government
29 may reduce the profits to itself, but so long as it wants to run an Industry, Industry by its very
30 nature has to be profit oriented. Now therefore the first Sub-clause, "Absence of profit motive
31 or gainful objective irrelevant for the venture in the public..." I take issue with this. There
32 cannot be... You have to look at the definition as it stands, not as you seek to interpret it. The
33 definition as it stands is business trade, business trade cannot be without a profit motive.

1 Then next para, "The true focus is functional and the decisive test is the nature of the activity
2 with special emphasis on the employer-employee relationship. If the organization is a trade or
3 business, it does not cease to be one because of philanthropy animating the undertaking." Now
4 let's go one by one. 1(a) and (b) I have dealt with. (c), "The true focus is functional and the
5 decisive test in the nature of activity with special emphasis on the employee." Now this is what
6 you will find in the three overruled judgments in *Solicitors* case, in *Madras Gymkhana's*
7 case. In all of them, the common term was that there is an employer-employee relationship
8 and therefore it is an Industry. What the learned judges have failed to notice is that you have
9 to be a trade. Now therefore a club, let's analyse it, can a club be called a business? Can it be
10 called manufacturing? Can it be called any of the other four items in that? If it can, then
11 employer-employee relationship must be there. But employer-employee relationship will be
12 there, even if it is not that. In any industry of any... I am using the word Industry, in any human
13 activity, there has to be employer-employee relationship. So the employer-employee
14 relationship is not the crux of the issue. The crux of the issue is whether it falls under the
15 definition on top.

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Employer-employee is the means of
17 conducting is according to you.

18 **JAMSHED P. CAMA:** Yes.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Employer-employee are perhaps the
20 means... That is not the definition part of it.

21 **JAMSHED P. CAMA:** Yes. The learned judges here have gone beyond the statutory words.
22 Perhaps in the socio-economic intention of the judges, they wanted to spread the word, as they
23 say, spread the butter. But the point in doing so, they have done something which has gone
24 contrary to the statute that they were interpreting. It must be remembered that the Industrial
25 Disputes Act is not only meant for workmen. It is also meant for managements. Today, if
26 Industrial Disputes is raised, and an award goes against management, it can be in multiple
27 crores. And I find, very often Your Lordships, both in the High Court and here, are overly
28 generous. No, pay the man something. So therefore, if I am to suffer that, then I must be
29 covered. I can't suffer that, I don't want to suffer that if I am not covered. It is an either/or
30 situation. So am I an Industry as defined in 2(j)? Am I employing workmen as employee as
31 mentioned in in 2(s)? I'm an industry and I must suffer the consequences. But if I am not, then
32 I don't want to suffer the consequences. So therefore one has to define the word 2(j) as it
33 stands.

1 **JUSTICE JOYMALYA BAGCHI:** Mr. Cama, you've been repeatedly being addressed on
2 what is the object of this entire legislation, but if you come to the Preamble it says settlement
3 of Industrial disputes.

4 **JAMSHED P. CAMA:** Yes.

5 **JUSTICE JOYMALYA BAGCHI:** So essentially, it's neither pro workmen nor pro-
6 employer, it is pro peace. The industrial dispute is in the heart of this legislation and its
7 settlement is its core. So, if we don't take an expansionist definition of industry, we leave out
8 various human activities where interface of employer-employee comes in out of this
9 ameliorative law relating to industrial peace.

10 **JAMSHED P. CAMA:** Look at the difficulty in this, turn to Justice Iyer's observation at page
11 283. Just look at that, that's exactly what happens. Page 283, let's take para 141 first. Do all
12 My Lords have 141? "Although Section 2(j) uses words to the widest amplitude in its two limbs,
13 this meaning cannot be magnified to overreach itself." That's what I'm saying.

14 **JUSTICE JOYMALYA BAGCHI:** Justice Chandrachud, in fact, uses the most articulate
15 expression, that we have this sticky problem, where do we draw the line through judicial
16 pronouncement, it is best left to the legislature.

17 **JAMSHED P. CAMA:** Now in the context, I mean, everybody has a soft spot for labour, so
18 do I.

19 **INDIRA JAISING:** [UNCLEAR]

20 **JAMSHED P. CAMA:** No, sarcasm doesn't do you credit.

21 **INDIRA JAISING:** Does it do you any good here?

22 **JAMSHED P. CAMA:** But then don't be sarcastic to me, it doesn't do me good, leave it. The
23 point I'm making, I lost my train of thought.

24 **INDIRA JAISING:** Pardon the interruption. We have been traditional opponents, it was just
25 an aside... I am sorry.

26 **CJI SURYA KANT:** No, no, Madam Indira, please don't make any... this kind of comments,
27 please not here, because of that...

28 **JUSTICE DIPANKAR DATTA:** Breaks the continuity madam.

29 **JAMSHED P. CAMA:** Now can you go back to 140.

30 **JUSTICE DIPANKAR DATTA:** The way he is building up his argument that gets
31 disconnected.

1 **INDIRA JAISING:** I'm very sorry.

2 **JUSTICE DIPANKAR DATTA:** And then you wouldn't expect it to happen when you are
3 arguing.

4 **GOPAL SANKARANARAYANAN:** Just to help Mr. Cama, I think Justice Bagchi's question
5 to you, which you were responding to, about drawing a line and...

6 **JUSTICE B.V. NAGARATHNA:** For that you went to para 141.

7 **JAMSHED P. CAMA:** Now 141, the learned Judges, I'm deeply obliged. I think my age is
8 catching up with me. 141, can you read that again, My Lords, if you don't mind? It says,
9 "although Section 2(j) uses words in the widest amplitude in its two limbs, this meaning
10 cannot be magnified to overreach yourself". And that's the point I'm making. Now having said
11 that, look at the next paragraph, the next paragraph says, "undertaking might suffer a
12 contextual and associational shrinkage, as explained in *Banerji*, and in this judgment, so also
13 'service' calling and like. This yields the inference, that all organized activities possessing the
14 triple element although not 'trade' or 'business' may still be "Industrial". This is what happens
15 when you magnify the language. The learned Judges themselves said, "don't magnify it" and
16 then he says, "even if it's not an 'Industry' you're still covered", therefore, if I was to address
17 Your Lordships on this question, as I am trying to do now, my submission would be Justice
18 Iyer's judgment has gone too far.

19 **JUSTICE B.V. NAGARATHNA:** But it says, "but resembles to what we find in trade or
20 business".

21 **J.P. CAMA:** Yes.

22 **JUSTICE B.V. NAGARATHNA:** He is in fact applying the *noscitur a sociis* here.

23 **JAMSHED P. CAMA:** But when he says, "it need not be a 'business'", what does that mean?
24 *Noscitur a sociis* would mean that all those are...

25 **JUSTICE B.V. NAGARATHNA:** Resemblance to what we find in 'trade' or 'business'.

26 **JAMSHED P. CAMA:** No, but then he says, "provided the nature..." Sorry, "although not
27 'trade' or 'business'".

28 **JUSTICE JOYMALYA BAGCHI:** Sir, we would in all probability, Justice Iyer meant was,
29 even if we take out the profit element from 'trade' or 'business', the character of a 'trade' or
30 'business' being a systemic organized activity, to create goods or services of value, is what is
31 the essence we will find in the definition.

1 **JAMSHED P. CAMA:** Absolutely, but in interpreting 'business' and 'trade', employer-
2 employee relationship is not the crux. That's the point I'm making. Undoubtedly, it is...

3 **JUSTICE JOYMALYA BAGCHI:** It's complementary.

4 **JAMSHED P. CAMA:** Sorry?

5 **JUSTICE JOYMALYA BAGCHI:** It's complementary. Because the activity must express
6 itself in an interface between 'capital' and 'labour' in the form of an employer-employee
7 relationship.

8 **JAMSHED P. CAMA:** Undoubtedly, but look what Justice Iyer says in Clause C in 142. "The
9 true focus is functional and decisive, the test is in nature of activity with special emphasis on
10 employer-employee relations". He has, in all the judgments that he has overruled, the learned
11 Judge has gone on this basis. He says, "solicitors: you have staff assisting you, in your club:
12 you have employees working for you". That's not the test. Can one really say, that a club is a
13 manufacturing entity? Can we say that? You see, ultimately, in interpretation we have to also
14 use common sense. You have to use common understanding of a particular word. Now
15 "Industry" has been given 4 or 5 subcategories. You have to read them in the understanding of
16 people. When Parliament enacted it, Parliament does not consist of great forensic experts.
17 They defined it in a manner in which a common man defines it. So therefore, when you say
18 "business", "trade" or other thing, you have to look at that. Now, emphasis on 'management'
19 and 'labour' with a view to overturn the definition is wrong. You can't say, "I will say that it is
20 a trade because there are workmen and management". It is that "because" which is bothering
21 me. So therefore...

22 **JUSTICE B.V. NAGARATHNA:** That means despite there being workmen, it need not be
23 an "Industry".

24 **JAMSHED P. CAMA:** That's right, that's right. So therefore, those categories which are
25 given, they are categories which are the fundamentals for interpretation. Now here, the
26 learned Judges have put the tail before the horse, whatever it is, the point means... cart before
27 the horse, I'm sorry.

28 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Rather, it is tail wagging the dog.

29 **JAMSHED P. CAMA:** Yes, I thought of that also. Yeah, now therefore...

30 **JUSTICE B.V. NAGARATHNA:** The case of club's Doctrine of Mutuality, in fact, applies.

31 **JAMSHED P. CAMA:** Yes, absolutely. And it's members for members. Club is, by members
32 for members.

- 1 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR] there are workmen.
- 2 **JAMSHED P. CAMA:** Even in a co-operative society, it's by members for members.
3 Therefore, you can't say that a co-operative society would be an industry, just because it
4 employs labour.
- 5 **JUSTICE B.V. NAGARATHNA:** They have their own Act of co-operative society.
- 6 **JAMSHED P. CAMA:** I'm only emphasizing for My Lords one more time that the test of
7 Justice Iyer is based on master and servant, and that is the wrong test. The test should be, and
8 I'll tell My Lord what the test should be.
- 9 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What should be the test?
- 10 **JAMSHED P. CAMA:** The test should be whether it is business, trade etc., first. Employing
11 labour as defined in Section 2 is straightforward. You don't need complicated constructions.
12 Is it a business, trade or whatever else as understood in common parlance, and does it employ
13 workmen? That should be the only test.
- 14 **JUSTICE B.V. NAGARATHNA:** Everything is undertaking. There again whether it should
15 take colour from business, trade, manufacture or it should not.
- 16 **JAMSHED P. CAMA:** It does, it does. As I pointed out to Your Lordships, it does. It is
17 undertaking in an industry. So, it takes its colour from there.
- 18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Mr. Cama, you should also... Sorry,
19 sorry, Sister.
- 20 **JUSTICE B.V. NAGARATHNA:** No, no, please go ahead.
- 21 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You should also go a little step further
22 and also explaining the essence of business, trade, or manufacturer.
- 23 **JUSTICE B.V. NAGARATHNA:** Yes.
- 24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You need to find something more in
25 that to find some kind of a commonality.
- 26 **JAMSHED P. CAMA:** No, that I will leave it to Your Lordships...
- 27 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We agree that it is perhaps not in the
28 binary of employer-employee.
- 29 **JAMSHED P. CAMA:** That's right.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It's not in that binary which will
2 define Industry. But what would define Industry would be on the basis of how you find the
3 essence of these expressions.

4 **JAMSHED P. CAMA:** My Lords, if you take...

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** One is a systematic activity.

6 **JAMSHED P. CAMA:** Yes, I agree with that, I agree with that. No question. But what is the...
7 what is meant by a 'business' we don't need to look at a dictionary for that. It's understood. So
8 therefore, and I'm repeating myself when I say that Parliamentarians are not the most
9 educated. When they therefore, use a word, they use it in the common parlance. And in
10 common parlance what does 'business' mean? They use the Hindi word, *dhandha*. May I just
11 finish in the afternoon?

12 **CJI SURYA KANT:** Mr. Cama, you go ahead the way you want. You explain your opinion on
13 Triple Test.

14 **JAMSHED P. CAMA:** Yes.

15 **CJI SURYA KANT:** And then as the question will come then what should be according to
16 you, what is the real true important meaning of the entire...

17 **JAMSHED P. CAMA:** Of definition of the Industry.

18 **CJI SURYA KANT:** ...of Industrial Dispute.

19 **JAMSHED P. CAMA:** Of Industrial Dispute.

20 **CJI SURYA KANT:** Absolutely.

21 **JAMSHED P. CAMA:** My Lord, I'm very clear in my mind... test... the Court whichever is
22 dealing with it, must test whether it comes within the 4 or 5 categories. Then you must test
23 whether the person who is claiming to be employed therein is a workman within the meaning
24 of the Act. Full stop. Why should we go more complicated? That was the intention of the Act.
25 Industry as defined, workmen as defined. It should be as simple as that.

26 **JUSTICE JOYMALYA BAGCHI:** But Mr. Cama, if you put it in that narrow encapsulated
27 form, then the entire governmental activity will be hived out of industry, because government
28 does not operate for profit.

29 **JAMSHED P. CAMA:** No, My Lord, government today is the largest industrialist. Today,
30 government has entered the field of industry in a massive manner. But I'll tell you something.
31 If it is not covered, it is not covered. Let us look at the definition.

1 **JUSTICE JOYMALYA BAGCHI:** Contextual understanding of appropriate government
2 and other provisions of the industrial field.

3 **JAMSHED P. CAMA:** If I may put it like... If I may put it this way. If the government is
4 carrying on business, then because it's the government makes no difference. But if it's a
5 government and is not carrying on business, then just because it is an employer of sorts doesn't
6 make it an industry. It has to be carrying on a business. And government does.

7 **CJI SURYA KANT:** We will continue after lunch.

8 **JAMSHED P. CAMA:** Yes, My Lords. Before lunch, My Lords Justice Bagchi asked me a
9 question about government. I've been giving it some thought just now over lunch. And I have
10 an answer which is complete. My Lord, please turn to Subsection 2(g). I'll read it to Your
11 Lordships, 2(g). It says, "Employer in relations to an industry carried on by or under the
12 authority of the Department of Central Government or a State Government shall be the
13 authority prescribed." So, in case of government, it is relation... is in industry. It applies only
14 where there's an industry. Now also, My Lords will notice that the kinds of industries are
15 further restricted by Section 2(a). Section 2(a) specifies the kind of industries to which the ID
16 Act will apply. So therefore, there is a restricted element on industry. First 2(a), only those
17 industries can be referred, because appropriate government; it says for appropriate
18 government and Central case it is these, and for others it is a State. Now, the appropriate
19 government therefore, is a government which has to make the reference and no other reference
20 can be made otherwise than what is mentioned in 2(a) and 2(b) for State. So therefore, there
21 is inherently in the act a restriction, not every employment comes within the contemplation of
22 Section 2(j). Now, if you look at 2(j) again, it says "means". It is therefore, Your Lordships have
23 always said when a definition clause says "means", then "means" means "means", nothing
24 more than that. It has to be addressed strictly. See Section 2(j), and then it says includes the
25 employee's definition. So, 2(j) is expressed. Nothing else but that.

26 Now, let us test Justice Iyer's judgment again there. Can Your Lordships really say that a club
27 is a business trade or undertaking or manufacturing? It is a social organization by members
28 for their own purposes and for their own pleasure. It's not an industry. If you give industry the
29 common parlance and common understanding, it meant. Again, take a research institution.
30 Can you really say the research institution is a trade undertaking manufacturing? So, you have
31 to come within that. And in my respectful submission, you have to look at the definition as it
32 stands and not with additions. You don't look at the definition by saying, that because the
33 government has funded it, therefore, it is an industry. Or because nobody has funded it,
34 therefore it's not an industry. Is it, as it stands, as it stands, is it a trade? Is it a business? If it
35 is, then whether it's funded by A, B, or C or whether it's not funded by A, B, or C makes no

1 difference. It is simple, it is as clear. The idea really as I have studied it today for this matter,
2 is absolutely clear in his intent. It says, who is covered? Which workmen are to be considered
3 for this purpose? And then it tells Your Lordships how to understand it. Now what has
4 happened today is that because of these judgments we have gone behind the words. We have
5 gone behind the words to find something which will allow us to have a social welfare aspect.

6 Now, My Lords, I have no difficulty with social welfare; it's a good thing. But social welfare
7 must end where the definition is clear. There can be no social welfare legislation contrary to
8 the strict language of the Act. And where the language, like in this case, is specific and clear,
9 then you can't have social welfare. You can't take a club and put it into industry. You can't take
10 a research institute and put it into manufacturing. So therefore, this endeavour of the Court
11 earlier to try and find some method, some means to extend the Act is with great respect, not
12 permissible, nor was it required. Social welfare must stop where the statute is clear.

13 **JUSTICE B.V. NAGARATHNA:** Justice Iyer himself said, "Nothing more and nothing
14 less."

15 **JAMSHED P. CAMA:** That's right.

16 **JUSTICE B.V. NAGARATHNA:** He himself said.

17 **JAMSHED P. CAMA:** Yes, he says can't expand it, and then he goes on to say even if not an
18 industry, "still covered". At 142, he says that, and then the next paragraph he says, even if it's
19 not an industry, still he'll cover it, and that is what has happened because of this expansive
20 interpretation, we've had a problem. Now, My Lords, there is another... this answers, if I hope,
21 I hope the first question, My Lord.

22 Now My Lords, as far as the second question is concerned, I have prepared a list of what
23 constitutes sovereign functions, from the various judgments that we had. I'll just hand it across
24 - nine copies.

25 I'm sorry, before I go to that, there is a judgment... I'm sorry, yes one second. **Adyanthaya**.
26 In **H.R. Adyanthaya** a Constitution Bench of this Court had occasion to consider whether
27 the definition of Section 2(s), workman, was specific or was it to be considered as *ejusdem*
28 *generis*, and the Court said there was a new word introduced. And the Court said you will read
29 all the words in the statute *ejusdem generis*. The word was 'operational'. Now, the matter
30 related to sales representatives. So, the question asked is why can't sales representatives be
31 considered to be operational? The argument made was it is it is not manual, technical, clerical,
32 therefore it can't fall within operational because operational has to be read coterminously with
33 the other words, and that's what the Court has held. Do My Lords have the judgment? Turn
34 My Lords, turn kindly to page 755. My Lords?

1 **CJI SURYA KANT:** Mr. Cama, are you referring to this *H.R. Ajanta*?

2 **JUSTICE B.V. NAGARATHNA:** *Adyanthaya.

3 **JAMSHED P. CAMA:** 1994 (4) SCC.

4 **JUSTICE B.V. NAGARATHNA:** *Adyanthaya*.

5 **JAMSHED P. CAMA:** Now, do all My Lords have it? Now, turn My Lords, kindly to page
6 755. Bear in mind that here the case was the new word, "operational". 755, from the top, please
7 leave about six lines. "As regards" ... My Lords, have it? "As regards the word skilled, we are of
8 the view that the connotations of the said word in the context in which it is used will not include
9 the work of a sales promotion employee such as the medical representative in the present case.
10 The word has to be considered *ejusdem generis*, and thus construed, would mean skilled work,
11 whether manual or non-manual, which is of a genre of the other types of work mentioned in
12 the definition." Therefore, if in interpreting the word 'workman', this Court has held *ke* you
13 have to read all the words *ejusdem generis* or *noscitur a sociis*, then there's no reason why we
14 should not do the same thing in the case of employer.

15 So, even in an industry definition, it's the flip side. Workman is one side and the other side is
16 employer. So, therefore if you read Workman as *ejusdem generis* you must also read the
17 employer as *ejusdem generis*. And to my mind, quite frankly there is no reason not to. Now,
18 what I was mentioning earlier.

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

20 **JAMSHED P. CAMA:** My Lords, I have given, Your Lordships in context of the second
21 question. May we just read it together? The second issue My Lords had raised. Let us just read
22 it together. It says, "Whether social welfare activities and schemes or other enterprises
23 undertaken by the government departments or their instrumentalities can be construed as an
24 industrial activity for the purposes of Section 2(j)." Once again, like in charity, I would submit
25 that if there is a social welfare activity, if the intention is to make money out of it and then pay
26 the people concerned, it would be an industry but if social welfare is done, as I said, feeding
27 the poor, giving housing to poor, if it is done altruistically and without any element of financial
28 intention or profit, even My Lords if it is floated out.

29 **JUSTICE JOYMALYA BAGCHI:** Mr. Cama, the idea of profit is more economics than it is
30 of law.

31 **JAMSHED P. CAMA:** I beg your pardon.

32 **JUSTICE JOYMALYA BAGCHI:** The idea of what is profit is more in the parlance of an
33 economic term, than a legal term and profit at best may be defined under the Income Tax. But

1 when it comes to what is altruism, and what is charity and in relation to an organized activity
2 creating value, where do you make the distinction between value being created of goods on a
3 temporal basis, or in respect of a temporal perspective and the utilization of such goods and
4 services for creating surplus or value?

5 **JAMSHED P. CAMA:** I have a bottom line.

6 **JUSTICE JOYMALYA BAGCHI:** Let us say someone manufactures food and distributes it
7 free. It is, as in the majority view of Justice Iyer, it is charity in relation to the consumer of
8 food, but it is not in relation to the workman who manufactured the food, who are paid a salary
9 for it.

10 **JAMSHED P. CAMA:** If they're paid a salary for it, then perhaps we can consider, I'm not
11 saying yes or no to that.

12 **JUSTICE JOYMALYA BAGCHI:** That is the distinction between Group B and Group C. A
13 non-profit organization which creates value and distributes valuable goods and services
14 without remuneration... without a price attached to it, but the relation of labour and the
15 employer, that's the employee and the employer is on trade or commercial terms. That is you
16 get a salary for it. So, why should we make that distinction?

17 **JAMSHED P. CAMA:** I will tell My Lords why. Because you are not reading the word
18 "manufacturer" and the other three words. You have to come within that. Then you can say
19 this is an industry. Now, you can have a government running...

20 **JUSTICE JOYMALYA BAGCHI:** So, we are reading the word, the second part of the
21 definition, "includes any employment" and the word is 'any', why should we restrict an
22 employment only for profit motive?

23 **JAMSHED P. CAMA:** Your Lordships are reading the definition of industry?

24 **JUSTICE JOYMALYA BAGCHI:** In the definition of...

25 **JAMSHED P. CAMA:** My Lords, but that... the other part applies to industrial disputes
26 raised by workmen, we are not concerned with that. That is why I pointed out that the section
27 is in two parts. That is the whole... In *Banerji*, they made this mistake. They said that the
28 definition is expansive because it includes these words also. The definition is not expansive,
29 definition is simple, one part is for industrial dispute by managements and the other part is
30 for industrial disputes by workmen. And that is why I...

31 **JUSTICE JOYMALYA BAGCHI:** So they are like two hands clapping.

1 **JAMSHED P. CAMA:** They are two hands clapping independently. You see now, for
2 example, workman may also have a dispute. You have a cooperative canteen in some
3 companies, run by workman, dispute arises; there you are. That's the second part. I know a
4 case when, Kamanis, for example, the company was taken over by the workman.

5 **JUSTICE JOYMALYA BAGCHI:** You may say that there would be an industrial dispute in
6 a charitable organization between two groups...

7 **JAMSHED P. CAMA:** Of workmen.

8 **JUSTICE JOYMALYA BAGCHI:** Of workmen. But there may not be an industrial dispute
9 between the employer...

10 **JAMSHED P. CAMA:** Absolutely, absolutely, I'm deeply grateful.

11 **JUSTICE JOYMALYA BAGCHI:** Will that not Mr. Cama [UNCLEAR].

12 **JAMSHED P. CAMA:** If you take it as separate, that's why I'm saying in *Banerji*, they made
13 this mistake. They say the definition is expanded because of this... it is not expanded, it means
14 this and includes that. Now My Lords therefore, what I would submit that, a charitable
15 organization cannot come within trade, cannot come within business. It is by its very language
16 antithetical. So therefore, my submission to Your Lordships is, that even if somebody is doing
17 some work for a salary, is the work itself an industry? You see, now if I may clarify my position
18 here. When you say that the work... industry must mean undertaking manufacture or calling,
19 it must be an industrial... must be manufacturer or calling or whatever it is in itself
20 intrinsically. It does not become a manufacturing or calling because somebody works in it. You
21 may have an establishment which is not an industry as defined here and still has somebody
22 working in it. But I am at pains to point out is that when you look at this, you must first see is
23 it a trade? Is it a business? And then look to see whether there's anybody employed or not
24 employed. Because then that person is not... The tail does not wag the dog; the dog is industry
25 on top, trade, business, manufacturing, that is the dog.

26 **JUSTICE B.V. NAGARATHNA:** Then all the municipal corporations, educational
27 institutions; forget about the aspect of charity, will be out. If the definition as you say is to be
28 applied, municipal corporations, educational institutions. Because they cannot take colour
29 from the words business, trade, manufacture.

30 **JAMSHED P. CAMA:** Then I would say that they are out. You can't be overawed by what's
31 happening outside the definition. One has to read the definition as it stands. If the Parliament
32 wanted that that should be covered, then like in the latest Act they would have included it. But
33 so long as the latest Act does not cover the subject we are dealing with, if it is not an industry,
34 it is not an industry. We must... I must say that we must have the courage to say, it is not an

1 industry. Why? Because it doesn't come within those parameters. We have been going out of
2 our way to find grounds and reasons to explain away the word in this section. Why? Why do
3 we do that? Social welfare is all very well. There is a judgment, I don't have it in my hand just
4 now, but I'll have it later to Your Lordships, where Your Lordships have held that even in social
5 welfare legislation, the social welfare element will give way to the precise language of the
6 statute. Now, is there any doubt as to the meaning of the words in Section 2(j). Business,
7 manufacturer etc., there is no dispute as to what it is. Now therefore, if it falls within that then
8 whether it is with workman's hand or not, with workman's hand and profit or no profit, it will
9 not be relevant; it will be an industry. But, if it does not fall within the definition of trade,
10 business etc., then no matter what the consequences, it is not a trade.

11 **JUSTICE B.V. NAGARATHNA:** That means you are applying the *noscitur a sociis* test?

12 **JAMSHED P. CAMA:** Absolutely.

13 **JUSTICE B.V. NAGARATHNA:** They didn't do it.

14 **JAMSHED P. CAMA:** I beg your pardon?

15 **JUSTICE B.V. NAGARATHNA:** In *Bangalore Water Supply* matter they didn't apply
16 it?

17 **JAMSHED P. CAMA:** I'm sorry I can't hear that.

18 **JUSTICE B.V. NAGARATHNA:** In the *Bangalore Water Supply* case, this court did
19 not apply that test?

20 **JAMSHED P. CAMA:** That's right. They refused to apply it.

21 **CJI SURYA KANT:** Rejected.

22 **JAMSHED P. CAMA:** So therefore, My Lords, what I'm submitting is that don't get
23 overawed by the consequences of your interpretation. Interpretation is interpretation. If the
24 legislature wants to improve upon it, the legislature will do so. But until that time, we are
25 bound to follow the law as it stands and not make up additional grounds

26 **JUSTICE B.V. NAGARATHNA:** Because there are some cases concerning Social Forestry,
27 whether it is an undertaking or not?

28 **JAMSHED P. CAMA:** If it is purely charitable, it is not. But if it is done by social... by the
29 Department as an industrial activity, maybe for the welfare of its own people it is an industry.
30 Please My Lords, bear in mind that charity is antithetical to industry. You may have a
31 charitable organization, but it will not be an industry because it is not involved in manufacture,
32 trade, or any of the other words. Please therefore, confine 2(j) to the language as it stands. And

1 the mere fact that this is a social welfare legislation should not persuade this court to go beyond
2 the language of the statute. I know that in social welfare legislation we have a more liberal
3 approach. One must look to see whether the section allows the liberal approach. In my
4 submission, it doesn't. Please bear in mind as I said just now, the 2(j) starts with the word
5 'means'. Now, Your Lordships are always laid down the difference between means and
6 includes. If it means, it means that's it.

7 **JUSTICE B.V. NAGARATHNA:** It's exhaustive.

8 **JAMSHED P. CAMA:** Exhaustive. And that is what this section is; it's exhaustive. Now,
9 having said that and taken enough of Your Lordships time on that subject, let me take you to
10 the second and third questions. Now My Lords, my note before Your Lordships... I have
11 submitted a note and marked it Issue no. 3.

12 **CJI SURYA KANT:** Yes, we have the note. We got the note.

13 **JAMSHED P. CAMA:** Your Lordship has it? Now, the question, Question 3 that Your
14 Lordships have asked is, what State activity will be covered by the expression sovereign
15 functions and whether such activities fall within or outside the purview of Section 2(j)? This is
16 a note based on what I have culled out from the various judgments which have been cited. "A
17 sovereign function usually defined as an essentially inalienable act performed exclusively by
18 states such as defence, diplomacy, and lawmaking. These functions are core, non-negotiable
19 duties aimed at preserving the State's security and peace and territorial integrity. The term has
20 been defined in several judgments of this Honourable Court as under. In *Corporation of*
21 *Nagpur*, the Court defined this phrase as under such legal functions shall be confined to
22 legislative power, administrative law and judicial power. *Bangalore Water Supply* said,
23 what is meant by the use of the term "sovereign" in relation to activities of the State is more
24 accurately brought out by using the term governmental functions, though there are difficulties
25 here also, inasmuch as the government has entered largely the new field of industry. Therefore,
26 only those services which are governed by separate rules and constitutional provisions such as
27 Article 3(10) and 3(11), should strictly speaking be excluded from the sphere of industry by
28 necessary implication. Further, it was held at page 296 for Chandrachud CJI, that one of the
29 exceptions carved out by the Court is in favour of activities undertaken by the government in
30 the exercise of its inalienable functions under the Constitution call it regal, sovereign or any
31 other name. I say, the justification for accepting this category of public essential services from
32 the definition of industry.

33 In *Chief Conservator of Forests*, it was held that the sovereign functions strictly
34 understood alone qualify for exception and not the welfare activities or economic adventures
35 undertaken by the government or statutory bodies. It was held that even in departments

1 discharging sovereign functions, if there are units which are industries and they are
2 substantially severable, they can be considered to come within the concept of industry. Held
3 at page 300, that the old and archaic concept of sovereignty does not survive as sovereignty
4 now vests in the public. At para 12, the test of sovereign functions is to find out whether the
5 State is answerable for such actions in Courts of Law. Several kinds of sovereign functions
6 were set out in para 12. They are not amenable to the jurisdiction of Civil Courts as the State
7 is immune to be sued in such matters in a Civil Court. It was held at para 13 that the Court
8 cannot extend the concept of sovereign functions to include all welfare activities. Otherwise,
9 the ratio in ***Bangalore Water Supply and Sewerage Board*** would be reduced
10 substantially.

11 In ***Agricultural Produce Market Committee v. Ashok*** so-and-so, it was held that
12 sovereign functions mean defence of the country, raising armed forces, making peace or war,
13 foreign affairs, power to acquire and retain territory; these are not amenable to the jurisdiction
14 of the ordinary Civil Courts. It was further held that if one is merely an employee of a statutory
15 body, his employment will not be outside the ID Act.

16 Lastly, if we have to find whether it is an industry or not, it is necessary to determine its pith
17 and substance." Further, para 80. "The Court concluded that sovereign functions in the new
18 sense may have very wide ramifications, not all functions of the State can be referred to as
19 primary and inalienable functions. Several examples have been given of sovereign functions,
20 therefore, for determining whether a particular function is sovereign or not, it is necessary to
21 find out which of the functions of the State could be undertaken by any private person or body.
22 Such functions cannot be called sovereign functions. It is clear that from the above that the
23 sovereign functions *per se* would be outside the Industrial Disputes Act, but social welfare
24 activities would be covered."

25 So, now, a sovereign function to the extent it is only a sovereign function is immune from Civil
26 Courts. But, if there is an element of industry within that, then the ID Act, to that extent, will
27 be applicable. This also answers the second question on social welfare. I think I've answered
28 the questions raised by you. And I'm very grateful for a very patient hearing from all Your
29 Lordships. Thank you.

30 **CJI SURYA KANT:** Thank you, Mr. Cama. Thank you. Thank you very much.

31 **JUSTICE DIPANKAR DATTA:** Mr. Cama, about the lack of forum, what is your submission
32 on that?

33 **JAMSHED P. CAMA:** Lack of forum? Now, My Lords, take a Supervisor earning over
34 50,000. Where is this forum? There is no forum. Take a White Collar Worker, Section 14 will

1 prevent him from going to any Civil Court. You see, if the law wants to give you a forum, it
2 gives you, but just because you don't have a forum doesn't mean you alter the law. Now as I
3 said to you earlier, a Supervisor working next to me earning over 15,000, he has no remedy. A
4 White Collar Clerk, a person not Clerk, a White Collar Employee, who's sitting in the desk next
5 to mine supervising my work, no remedy. So, where the law wants to give you a remedy, it
6 gives you. Where it doesn't want to give you a remedy, it doesn't give you. It's as simple as that.
7 The endeavour is what we find is the endeavour is to try and cover everybody. Social welfare.
8 But, in the process of doing social welfare you are harming the Act as it stands. Legislature can
9 enact. There is no reason why legislature can't enact, but the legislature doesn't want to or just
10 hasn't. If it hasn't, it hasn't. That's as simple as that.

11 **JUSTICE B.V. NAGARATHNA:** As I was saying, a service, suppose there is a service, there
12 are employees in that service, unless you relate that to business, it goes out of the expression
13 industry.

14 **JAMSHED P. CAMA:** Yes. And if there's an employee...

15 **JUSTICE B.V. NAGARATHNA:** Example, a hotel industry, we say. That is essentially a
16 service?

17 **JAMSHED P. CAMA:** Yes, it is a service industry. Yes.

18 **JUSTICE B.V. NAGARATHNA:** So, you have to relate it to business then?

19 **JAMSHED P. CAMA:** That's right. And correspondingly My Lords, if it is a service industry
20 or if it is an industry, for that matter, but the man is not a workman, he's out of the Act. It's
21 both ways.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Food Security Act, under which the
23 daily put to be mid-day meals, is an obligation of the government.

24 **JAMSHED P. CAMA:** Sorry, I didn't get that.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Mid-day meals under the Food
26 Security Act, is the obligation of the government. What they have done is, that they have hived
27 it off to large number of companies which manufacture, which make food and supply day-to-
28 day. It so invariably happens, that all of a sudden they realise that one particular industry is
29 not supplying food properly, and then government takes it over and then does the supply
30 directly. If the industry is doing it, it falls under the definition because those contractors are
31 purely and completely under the... doing it as a business. The moment it hives it off, it is
32 directly under the government. Then it is not an industry. But look at it from a different
33 perspective. So far as this workmen are concerned, they are continuously there. In first

1 instance they are under the contractor; in the second instance they are under the government.
2 Therefore, their access to the Act would terribly be dependent on whether the government
3 does it directly or not.

4 **JAMSHED P. CAMA:** I follow. It may be unjust. But unjust does not make it correct or legal.
5 Now the point is, first of all, persons engaged by a contractor are not workmen under 2(s) of
6 the ID Act. Your Lordships have held, that contract labour are not workmen. No, I'm just... I'm
7 just... I'm explaining my point of view. So therefore, while they were working with me through
8 the contractor, they were not my workmen. Technically, when the contractor leaves, he takes
9 his workmen with him and goes. So, there are no workmen left behind. But if there are
10 workmen left behind and they join my service, from that date onwards, they are not doing
11 industrial activities.

12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Because they are not...

13 **JAMSHED P. CAMA:** Because from that day onwards there's no industry.

14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Not in the Act?

15 **JAMSHED P. CAMA:** Not in the Act.

16 **JUSTICE B.V. NAGARATHNA:** That means who does the work or activity you're
17 emphasizing, rather than what the activity is.

18 **JAMSHED P. CAMA:** That's right.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Not activity basis; industry basis.
20 [UNCLEAR] Give it to you, it will be there.

21 **JAMSHED P. CAMA:** My Lords, bear in mind, as contract labour they're not workmen. This
22 Court has held so and when they... so until that time they are not covered by the Act, after...
23 after they come back directly to my control, if I'm not doing any manufacturing etc., then they
24 are not covered.

25 **JUSTICE UJJAL BHUYAN:** You are saying that don't go for purposive interpretation, go
26 for literal interpretation.

27 **JAMSHED P. CAMA:** Go for?

28 **JUSTICE UJJAL BHUYAN:** Literally. Literal interpretation.

29 **JAMSHED P. CAMA:** My Lords, purposive interpretation has to be permissible. It cannot
30 be purposive interpretation going beyond the statute.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** If the text is clear, don't have any
2 further inquiry is what you say.

3 **JAMSHED P. CAMA:** That's right. That's why Justice Sujata Manohar in her...

4 **CJI SURYA KANT:** Vagueness... understand.

5 **JAMSHED P. CAMA:** Once again My Lords.

6 **CJI SURYA KANT:** Thank you for sparing time for us.

7 **JAMSHED P. CAMA:** Thank you for a very pleasant hearing.

8 **CJI SURYA KANT:** Thank you for your wonderful assistance. Yes, Mr. Sengupta is online.
9 Now, please connect Mr. Sengupta.

10 **PARTHASARATHI SENGUPTA:** Am I audible to Your Lordships?

11 **CJI SURYA KANT:** Yes, yes, Mr. Sengupta. Thank you very much for joining us.

12 **PARTHASARATHI SENGUPTA:** It is a privilege to get an opportunity to argue before so
13 many honourable judges, which we do not usually get, and My Lord, it is also a privilege to
14 make submissions before so many learned lawyers who are before Your Lordships. Now My
15 Lord, I shall be very precise in my submission. I say, My Lord, before we go to anything else,
16 kindly come to the Industrial Disputes Act which has... this 1947 Act has its objects and
17 reasons. Now these objects and reasons, clearly say, why it is experience of what... do you have,
18 Your Lordships... have the Industrial Disputes Act before Your Lordships?

19 **CJI SURYA KANT:** Yes, sir.

20 **GOPAL SANKARANARAYANAN:** Page one of Disputes.

21 **CHANDER UDAY SINGH:** Page one.

22 **CJI SURYA KANT:** Page 1, no?

23 **PARTHASARATHI SENGUPTA:** "Experience of the working of the Trade Disputes Act,
24 1929, has revealed that its main defect is that while restraints have been imposed on the rights
25 of strike and lock-out in public utility services no provision has been made to render the
26 proceedings institutable under the Act for the settlement of an industrial dispute, either by
27 reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the
28 parties to the dispute. This defect was overcome during the war by empowering under Rule
29 81A of the Defence of India Rules the Central Government to refer industrial disputes to
30 adjudicator and to enforce their awards." Now, My Lords, we are pausing here for a moment.
31 Initially the Trade Disputes Act 1929, there were defects which is noted. One of the purpose is

1 to get away with it. And the purpose says that, kindly see, "is being kept in force by the
2 Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as
3 industrial unrest in checking which this rule has proved useful, is gaining momentum due to
4 the stress of post-industrial re-adjustment, the need of permanent legislation in replacement
5 of this rule is self-evident. This Bill embodies the essential principles of Rule 81 A, which have
6 proved generally acceptable to both employers and workmen, retaining intact, for the most
7 part, the provisions of the Trade Disputes Act, 1929."

8 Now, My Lord, there two institutions for the prevention and settlement of industrial dispute.
9 That has been mentioned. I shall not take Your Lordships through the details of it. The objects
10 and reasons are before Your Lordships. Now, My Lord, the Bill also seeks to rearrange the
11 administration of the conciliation machinery. This is another aspect.

12 Now for whom? These aspects are for whom? For the working class. Another important new
13 feature relates to prohibition of strikes and lockouts. Now, My Lord, here I pause for a moment
14 to say that I am not in agreement with the submission put forward by my learned friends, that
15 this is a pro-labour legislation. No. It is a balanced legislation which checks its cover, interests
16 of labour, as also interest of employers. Why I say so? It will be clear from the Preamble to the
17 Act. It says that purpose is to... My Lord, may I, just for a second... "My Lord, an act to make
18 provision for the investigation and settlement of industrial disputes." It doesn't stop there.
19 "And for certain other purposes." Therefore, investigation and settlement of industrial dispute
20 is paramount thing. Now, there cannot be an industrial dispute unless there is an industry.
21 Therefore, when we talk about legislation which makes room for settlement of Industrial
22 Dispute, it must necessarily relate to industry. And it talks about Industrial Disputes. And the
23 primary purpose is to preserve and maintain industrial peace and harmony.

24 Now, when we say "industrial peace and harmony", kindly see two definitions before we go to
25 2(j). My Lord, 2(g), my esteemed friend Mr. Cama has placed before Your Lordship. "Employer
26 means in relation to an industry carried on by or under the authority of any department of the
27 Central Government or a State Government, the authority prescribed in this behalf, or where
28 no authority is prescribed, the head of the department." My Lord, this does not, in my very
29 respectful submission, throw any light on the question, "What is an industry?" It says in
30 relation to an industry, so-and-so will be the employer. So-and-so will be the employer. And
31 the next clause makes it further clear, which says, "In relation to an industry carried on by/or
32 on behalf of a local authority, the Chief Executive Officer of that authority." Now My Lord, if
33 we read this in two parts; one is, it contemplates an industry carried on by/or under the
34 authority of any department of the Central Government." And second part, "Industry carried
35 on by/or on behalf of a local authority." And then specifies who will be the employer.

1 Therefore, my respectful submission will be that the Act itself contemplates, industry carried
2 on by the Central Government and by/or on behalf of local authority.

3 Now My Lord, if I take Your Lordships to the definition of "Industrial Dispute" 2(k). Industrial
4 dispute means, "any dispute or difference between employers and employers, or between
5 employers and workmen, or between workmen and workmen, which is connected with the
6 employment or non-employment with terms of employment or with the conditions of labour
7 of any person." Now, My Lords, kindly pause here for a moment. It postulates a difference
8 between employers and employers. If it is solely for the purpose of giving relief to the working
9 class, then employers and employers dispute would not have come within the parameters. And
10 then, between employers and workmen or between workmen and workmen. So, two groups of
11 workmen are having divergent views. That affects industrial peace and harmony. And
12 therefore, that has to be resolved.

13 Kindly see with this, this is not all. Which is connected with the employment or non-
14 employment, or the terms of employment, or with the conditions of labour of any person. Now
15 My Lord, employment, non-employment, conditions of labour. Now, My Lords, if that is so,
16 then read with the earlier definition which contemplates industry carried on by Central
17 Government?

18 **CJI SURYA KANT:** Mr. Sengupta, can you hear us?

19 **PARTHASARATHI SENGUPTA:** Yes. Yes, very much. Some others... yes also... we hear.

20 **JUSTICE DIPANKAR DATTA:** You carry on.

21 **PARTHASARATHI SENGUPTA:** Yes. Now, My Lords, I shall take Your Lordships to the
22 basic arguments which have been advanced on behalf of the labour. And the arguments
23 advanced on behalf of the employer. The working class, they say, where do we go? Where is
24 the alternative forum? I am in one with them. The forum as provided under the Industrial
25 Disputes Act cannot be substituted by Tribunals and other things relating to government
26 employment or public employment. Why? The Industrial Tribunals have different powers.
27 One is, as Your Lordship's Court have held in a Federal Court judgment of 1948, that Industrial
28 Tribunals have more power than a Civil Court in the traditional sense, because it can create
29 contracts between the employer and the workmen. For example, a wage dispute is referred to
30 a Tribunal. Tribunal says 'No, no, no, the wage structure should be this.' So, Tribunal is
31 changing, altering the wage dispute, by prescribing the new wage scale. That means, it can
32 create a contract. If a person is terminated, the Tribunal will say, you are reinstated, go there.
33 That means, imposing a person who was terminated on the employer. Therefore, the purpose
34 of the Industrial Disputes Act becomes clear from this, that the purpose was to protect the

1 persons who are in the industry. If that is so, the entire Act has to be interpreted from the angle
2 of the working class. Even though, if I say even though, there are provisions checking the rights
3 of workmen, checking the rights of workmen. Say for example, strikes. The restrictions are put
4 there. You can't just go and say, 'Well, I'll go on strike today.' There are methodologies,
5 procedures prescribed for that. And there are, My Lords, provisions for punishment if you do
6 not go by that. Therefore, that's a check on the workmen. So, if it is termed as a one-sided
7 legislation, then there could not have been any check on the workmen.

8 Therefore My Lord, I read it as having a balanced view. Now if a balanced view leads us to this
9 reading, that there... this industrial establishment calls for consideration, kindly see 2(ka) once
10 more. 2(ka) "industrial establishment or undertaking means an establishment or undertaking
11 in which any Industry is carried on." Therefore, whenever there is a mention of industrial
12 establishment, that necessarily means that, there an Industry is carried on. That has got the
13 blessings of the legislature.

14 Now My Lord, I shall take Your Lordships through some other provisions which are relevant
15 for determining this question. If Your Lordships kindly see, Industrial Disputes Act Schedules.
16 My Lord, Schedule 1, deals with, as Your Lordships have already seen, industries which may
17 be declared to be public utility services. And there Your Lordship will find many... Yes, My
18 Lord? Yes, there are services. Service in hospitals and dispensaries. Doesn't make any
19 distinction between hospitals and dispensaries which is run by government or local body or a
20 private employer. Now, as suggested by Mr. Cama, read it as it is. Then My Lord, service in
21 hospitals and dispensaries cannot be curtailed; it will go to anybody.

22 Thereby the government comes in. Service in any oil field. Oilfield may be done, treated by
23 government or otherwise. Next, My Lord, kindly see 28. "Industrial establishments,
24 manufacturing or producing nuclear fuel and components, heavy water, and allied chemicals,
25 and atomic energy." Therefore, this is something which one may say it's a sovereign function.
26 If that is so, then it is not an industry. But such a function is being assigned to an industrial
27 establishment coming under the First Schedule. Therefore, My Lord, in my very respectful
28 submission, that these types of industries having found place in Schedule 1, make it
29 abundantly clear that governments are not excluded.

30 Now the question arises, if the government is not excluded, what else is? If I say, My Lord,
31 nothing is. Here, My Lord, if Your Lordship kindly comes to Section 9A. "Notice of Change.
32 Shall I say it's a change within such and such time, where the discharge is affected in
33 participants of any settlement. (b). Where the workmen likely to be affected by the change and
34 persons to whom the fundamental and supplementary rules, civil services. Rules, civil services,
35 temporary service rules, civil service regulations, rules, or the Indian Railways Establishment

1 Accord, or any other rules or regulations that may be notified in this behalf by the appropriate
2 government in the Official Gazette." Now, My Lord, there was no point in making this
3 provision, mentioning that were the workmen likely to be affected or belong to these
4 industries. That means, they can belong to the industry, but 9A, will not apply to them.
5 Therefore...

6 **CJI SURYA KANT:** Yes, please.

7 **PARTHASARATHI SENGUPTA:** Yes. Now, My Lord, apart from that, another aspect is
8 11A, as Your Lordships have already *in extenso* discussed during the deliberation; My Lord,
9 I'll just add one or two words. 11A was introduced... Section 11A of the Industrial Disputes Act.
10 "Where an Industrial Dispute relating to the discharge or dismissal of a workman has been
11 referred to a Labour Court Tribunal or National Tribunal for adjudication, and in the course
12 of the adjudication proceedings, the Labour Court Tribunal/National Tribunal, as the case
13 may be is satisfied that the order of discharge or dismissal was not justified. It may by its award
14 set aside the order of discharge or dismissal and direct reinstatement..." kindly marked this...
15 "direct reinstatement of the workmen on such terms and conditions, if any, as it deems fit or
16 give such other relief to the workmen, including the award of any lesser punishment in lieu of
17 discharge or dismissal as the circumstances of the case may require. Provided that in any
18 proceeding under this section, the Labour Court Tribunal/ National Tribunal as the case may
19 be shall rely only on the materials on record and shall not take any fresh evidence in relation
20 to the matter."

21 Now My Lord, no Tribunal constituted... No Tribunal...

22 **CJI SURYA KANT:** Yes.

23 **PARTHASARATHI SENGUPTA:** "No Tribunal constituted by the government for the
24 government employees by the Parliament for the government employees gives this right to any
25 employee to have his punishment reassessed by an independent body." As it was put, if it does
26 not appear, it does not appear. No. So, if you read the statute, only because of 11A, this power
27 is given; no other remedy. Therefore, this is a power. This is an authority which inures to the
28 benefit of the working class. Taking all this together, kindly remember we are interpreting a
29 provision of the Industrial Disputes Act, namely 2(j). And My Lords, for this purpose, before
30 taking Your Lordships to this, I was referring to only two cases - two, three cases. One is **AIR**
31 **1978 SC**, page 474.

32 **CJI SURYA KANT:** Yes.

33 **PARTHASARATHI SENGUPTA:** ***KCP Employees Association.***

34 **JUSTICE DIPANKAR DATTA:** What is the cause title?

- 1 **PARTHASARATHI SENGUPTA:** Cause title is, My Lord, *KCP Employees'*
2 *Association, Madras v. Management of KCP Ltd.*
- 3 **JUSTICE DIPANKAR DATTA:** You have the cross SCC citation?
- 4 **PARTHASARATHI SENGUPTA:** *AIR, 1978 SC*, page 474.
- 5 **JUSTICE DIPANKAR DATTA:** We are asking you, do you have the cross SCC citation?
- 6 **PARTHASARATHI SENGUPTA:** Oh, cross SCC citation? I'm sorry, I'm sorry, My Lords.
- 7 **COUNSEL:** (78) 2 SCC 42.
- 8 **JUSTICE DIPANKAR DATTA:** 1878, Volume 2?
- 9 **COUNSEL:** SCC, page 42.
- 10 **JUSTICE DIPANKAR DATTA:** 42. Yes.
- 11 **PARTHASARATHI SENGUPTA:** Kindly come... Kindly come to the last paragraph. "In
12 industrial law - interpreted and applied in the perspective of Part IV of the Constitution - the
13 benefit of reasonable doubt on law and facts, if there be any such doubt, must go to the weaker
14 section, labour." My Lords, if this is the principle, and it has been followed for all these years
15 so, that is the test. If there is any doubt, the benefit of doubt shall go to a particular category.
16 Now, that there is doubt cannot be questioned. Unless there is a doubt about the interpretation
17 of Industry, the matter would not have troubled after this Court at this level after 48 years. So,
18 there has been doubt. Some Courts have taken this view, some Courts have taken that view,
19 some Courts have approved it. Ultimately, it has travelled up to Your Lordships. So, doubt is
20 there.
- 21 Now, in resolving that doubt, the benefit of doubt must go to the weaker section, labour.
22 Therefore, it should be interpreted in a way, which comes to the benefit of the working class.
23 That is one of the fundamentals of interpretation. This has been followed in two subsequent
24 cases. *AIR 1980 Supreme Court*. Page 1896.
- 25 **CJI SURYA KANT:** Please give SCC citation also, Mr. Sengupta.
- 26 **PARTHASARATHI SENGUPTA:** Yes, SCC citation, 1980...
- 27 **COUNSEL:** So, if it is *Gujarat Steel Tubes*, it is *1980 (2) SCC 593*.
- 28 **CJI SURYA KANT:** 2 SCC?
- 29 **COUNSEL:** 593, My Lords. *Gujarat Steel Tubes*, 593. *Gujarat Steel tubes Limited*
30 *vs. Gujarat Steel Tubes Mazdoor Sabha*.

1 **PARHTASARATHI SENGUPTA:** My Lords, I shall place only two paragraphs. First is...
2 yes, My Lords, last eight lines of paragraph 20. "Where workmen on ₹100 a month, demand
3 immediate negotiation. The reason is that, privatisations have no patience beyond a point.
4 Now and here by negotiation is the shop floor clamour. In this very matter, although the
5 controversy before the Arbitrator fell within a small compass, it took a year and 90 printed
6 pages to decide, inevitably followed by a few years and 130 printed pages for judgment in the
7 High Court and a longer spell in this court, which is slightly lesser length of judgment. Which
8 workmen under third world conditions can withstand this wasting disease while hunger leaves
9 no option, save to do or die. Raw life, not rigid logic is the mother of law."

10 So, look at the raw life situation. A person is putting his labour, getting his money, taking...
11 purchasing food for his children. He cannot wait till the Tribunal, in the nature of
12 Administrative Tribunal, decides. Now, My Lords, next paragraph of this judgement, which I
13 am tempted to show is, 147. My Lord, It starts with...

14 **JUSTICE DIPANKAR DATTA:** Paragraph 147.

15 **PARTHASARATHI SENGUPTA:** Yes 147. It starts with the last part of our conclusions. My
16 Lordships have got it? "The last part of our conclusions relates to the relief which must be
17 fashioned with an eye on mutual equities. We cannot ignore a few raw realities since law is not
18 dogmatics but pragmatics, without temporising on principle. The Management's limitations
19 in absorbing all the large number of discharged employees all at once when, steel, the raw
20 material, is scarce, is a problem. Likewise, their inability to pay huge sums by way of back
21 wages or otherwise, without crippling the progress of the industry."

22 Now My Lord, this brings the situation, kindly come, how the court views it. Last eight lines.
23 "Every proposal must be bottomed on the basic economic fact that the beneficiaries are from
24 the many below the destitution line. This Court has, in a very different context though, has
25 drawn attention to the Gandhian guideline." This is what I am relying upon. "Whenever you
26 are in doubt, apply the following test. Recall the face of the poorest and the weakest man whom
27 you may have seen, and ask yourself, if the step you contemplate is going to be of any use of
28 him." So, My Lord, if Your Lordships feel that state...

29 **CJI SURYA KANT:** Yes, Mr. Gupta.

30 **PARTHASARATHI SENGUPTA:** Yes, My Lord. Therefore, Supreme Court itself has
31 applied this Gandhian guideline, which if applied in this case will take Your Lordships to a
32 decision which will be, not legalistic, but realistic. Just by that... Now, My Lord, last judgement
33 on this is **(1982) 1 SCC**. Page 117. My Lords have kindly got it?

1 My Lord, here, the question arose, if I may tell for Your Lordship's convenience so that Your
2 Lordships don't have to go through all these pages. My Lord, there was a difference between
3 workmen and employer. The employer says, well, we will promote as we like. Promotion is a
4 prerogative of the employers. The employees objected. Matter went to the Tribunal, and the
5 Tribunal took the classical view, well, employers, the employee has no right of promotion;
6 therefore, it has been done that way, no interference is called for. The matter was then brought
7 up before this Honourable Court directly without going to the High Court.

8 Now My Lord, kindly see, the question argued was, well, these persons who were not promoted
9 but kept where they were, they are victimised. Kindly mark this expression, "victimised". Now,
10 My Lord, Mr. Pai in that case argued, following in ***Bharat Bank's*** case, victimisation is an
11 ordinary English word. Which means that a poor person has become a victim. In other words,
12 that he has been unjustly dealt with. Now, My Lord, a submission was made on behalf of the
13 management in that case, that victimisation had acquired a special meaning in Industrial
14 Disputes and connoted a person who became the victim of employer's wrath by reason of his
15 Trade Union activities. And that the work could not relate to a person who was merely unjustly
16 dismissed. This submission, however, was not considered by the court. When, however, the
17 word 'victimisation' can be interpreted in two different ways; the interpretation which is in
18 favour of the labour should be accepted, as they are the power to order section of the people
19 compared to the management.

20 Then My Lord, ***KCP*** is followed. Then ***KCP Employees' Associations*** is followed, that
21 paragraph I have.

22 **CJI SURYA KANT:** Mr. Sengupta just for a second. There was a Three-Judge Bench matter
23 listed at 3:00 o'clock. Since this matter is going on and likely to take some more time, so that
24 Bench is discharged. We will try to list that Aravali matter, maybe next week.

25 **PARTHASARATHI SENGUPTA:** Maybe

26 **CJI SURYA KANT:** Monday or Tuesday. We'll see that where I can accommodate you.

27 **PARTHASARATHI SENGUPTA:** As Your Lordships please, My Lord. As Your Lordships
28 please.

29 **CJI SURYA KANT:** We will continue with your matter, Mr. Sengupta. There is another
30 matter which we are adjourning.

31 **PARTHASARATHI SENGUPTA:** As Your Lordships, please.

32 **CJI SURYA KANT:** We will continue with your submission.

33 **PARTHA SARATHI SENGUPTA:** Now? Your Lordship, will be continuing now?

1 **CJI SURYA KANT:** Yes, yes.

2 **PARTHA SARATHI SENGUPTA:** Yes. Then, My Lords, I take Your Lordships to the other
3 aspect of it, that Your Lordships are interpreting the word Industry. That's the word relatable
4 to reality - What is an Industry? Now My Lord, kindly have a look at these three citations that
5 are made. There are two ways of looking at it. Look at from the angle which will benefit the
6 poorer section, that means labour. The employer may be very, very right in saying either it is
7 there or it is not there in the statute. Therefore, it is very clear. If that is so clear-cut, then no
8 doubt arises. The matter would not have been there for 48 years and coming up to this level.
9 So, a doubt arises, doubt exists, and this is how it has come. Therefore, industry should get a
10 liberal meaning for the benefit of the working class.

11 Now My Lords, if I may say a few words more on this. Kindly come to the **Bangalore Water**
12 **Supply** judgment. Paragraph - first of all its Justice Beg's judgment. In that judgment, I shall
13 not trouble Your Lordships with it... I'll make a short point of it. I'll just draw Your Lordships'
14 kind attention to paragraphs 26 and 27. May I start My Lord? Para 26, Justice Beg's judgment,
15 starting with "legalese and logomachy have genius..." "Legalese and logomachy have the
16 genius to inject mystique into common words, alienating the laity in effect from the rule of
17 law. What is the concern? What is the common worker or ordinary employer to do if he is
18 bewildered by a definitional dilemma, and is unsure whether his. enterprise say, a hospital,
19 university, a library, a service club, a local body, a research institute, a pinjarapole, a chamber
20 of commerce, a Gandhi Ashram-is an industry at all." My Lord, for the last 48 years they have
21 known what is industry.

22 Now if Your Lordships take a view which will say no, your industry establishment is not an
23 industry, then they will be at a loss, totally. Then, "Is lost to uncertain erudition and cases have
24 even cancelled each other out while reading meaning. "I do not think" said Diplock L.J., that
25 anywhere, except in a court of law, it would be argued with gravity that a Dutch barn or grain
26 and fodder stores or any ordinary farm buildings are properly described as repositories. A
27 Gloucester shire farmers would say they were farm buildings and would laugh at their being
28 called 'repositories.'" in the same spirit, Stamp J. rejected the argument that the carrying on of
29 the business of a crematorium or materials to any process. If a crematorium involved of
30 subjection of goods or materials to any process within Section 271 of the Income Tax Act, as a
31 distortion of the English language. Put as subjecting the English language and more
32 particularly, simple English phrase to these kind of process or philology and semasiology.
33 Maxwell, "Esoterica is anathema for law affecting the common man in the commerce of life,
34 and so the starting point for our discussion is the determination to go by the plain, not the
35 possible, sense of the words used in the definition, informed by the, context and purpose of
36 the statute, illumined by its scheme and getting and conceptually coloured by what is an

1 industry at the current developmental stage in our country. In our system of precedents our
2 endeavour must be, as urged by counsel, to reconcile prior pronouncements, if possible, and
3 to reconsider the question altogether, if necessary. There are no absolutes in law since life,
4 which it serves, is relative. 'What is an industry in America or the Soviet Union may not be one
5 in India and even in our Country what was not an industry decades ago may well be one now.
6 Our judgment here has so pontifical flavour but seeks to serve the future hour till changes in
7 the law or industrial culture occur."

8 "Law, especially industrial law, which regulates the rights and remedies of the working class,
9 unfamiliar with the sophistications of definitions and shower of decisions, unable to secure
10 expert legal opinion, what with poverty pricing them out of the justice market and denying
11 them the staying power to withstand the multi decked litigative process, *de facto* denies social
12 justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory. Is it
13 possible, that the legislative chambers are too preoccupied with other pressing business to
14 listen to court signals calling for clarification of ambiguous clauses? A careful, prompt
15 amendment..." kindly mark this sentence... A careful prompt amendment of Section 2(j) would
16 have pre-empted this docket explosion before Tribunals and courts. This Court, perhaps more
17 than the Legislative and Executive branches, is deeply concerned with law's delays and to
18 devise a prompt delivery system of social justice."

19 My Lord, just pause here for a moment. It says that it's unable to secure expert legal opinion.
20 What is meant by these words? Layman, the common man in the street knows this is an
21 industry, this is an industry. And secondly My Lord, what has held the field for 48 years a
22 person was born there. Then now he is 48 years of age and now he is to be told that well look
23 here, you are not the workmen because your establishment is not an industry. We go by the
24 rigid definition, not by what was intended to be included. Why I say 'intended to be included'?
25 I shall explain, My Lord.

26 Next, My Lord, I will take Your Lordships to Justice Iyer's judgment in ***Bangalore Water***
27 ***Supply***. My Lord, kindly keep this in mind and kindly read it with the Constitution itself. If
28 Your Lordships have a look at the Constitution of India, the starting point, "We, the People of
29 India... My Lord, we say, "We, the People of India, having solemnly resolved to constitute India
30 into a sovereign, socialist, secular, democratic Republic, and secure to all its citizens...", I'm
31 coming to that later on. First is, the People of India are constituting India to a sovereign
32 republic. The word sovereign has been discussed during this discourse, but I am saying, it has
33 to be given a meaning. This is the goal of the Constitution. Can a statute go beyond what is the
34 requirement of the Constitution, is a question that Your Lordships will have to consider.

1 Then, "and to secure to all its citizens, justice, liberty, equality, and to promote among them
2 all fraternity, assuring the dignity of the individual and the unity and integrity of nation."
3 Therefore, this was the purpose of the Constitution makers say that "People of India are
4 constituting India to a sovereign Republic. So, kindly My Lord, pause here for a moment.
5 These expression, 'socialist' was not there. It was introduced by the 42nd Amendment in 1976,
6 with effect from 03-01-1997. And when the judgment was delivered, 1978 February, I believe.
7 So, we are already in the socialist *zamaana*. Constitution has been so amended. Whether we
8 like it or not, whether the employers want it or not, this has to be given the meaning that a
9 socialist society demands. Therefore, this expression 'socialist', takes us to the concept that
10 was propagated in the judgment of Justice Krishna Iyer. Now My Lord, I take Your Lordships
11 to the judgment of Justice Iyer - two paragraphs.

12 **CJI SURYA KANT:** Citations, Mr. Sengupta?

13 **PARTHASARATHI SENGUPTA:** Yes. Citation is... I give Your Lordships. That is **(1978)**
14 **2 SCC 213.**

15 **CJI SURYA KANT:** You can just refer to paragraph and the author. You want to refer to
16 Justice Iyer or Justice Beg or Justice Chandrachud.

17 **PARTHASARATHI SENGUPTA:** Yes, yes, yes. Justice Iyer is now, what is being cited by
18 me.

19 **CJI SURYA KANT:** Yes. Please point out paragraph also.

20 **PARTHASARATHI SENGUPTA:** Yes. Paragraph... in my book, it is paragraph 140...

21 **CJI SURYA KANT:** 140.

22 **PARTHASARATHI SENGUPTA:** ...and 141.

23 **CJI SURYA KANT:** That's it. 140, "The Industry as defined in Section 2(j)."

24 **PARTHASARATHI SENGUPTA:** That's right. Now, My Lord, I would say that this read as
25 a whole, gives rise to a number of questions which one might say is not acceptable as Mr. Cama
26 rightly said, this is not acceptable. "The point is not whether it is acceptable or otherwise; the
27 point is, the economic relationship such as found in trade or business between the head who
28 employs and the others emotively come to render service. In one sense, there are no employers
29 and employees, but crusaders all. In another sense, there is no wage basis for the employment,
30 but voluntary participation in the production inspired by the lofty ideals and unmindful of
31 remuneration, services, conditions and the like." Supposing, My Lord is correct, there is an
32 *ashram*... Yes, My Lord? I better start from, "The second species of charity..."

- 1 **CJI SURYA KANT:** Yes.
- 2 **PARTHASARATHI SENGUPTA:** "The second species of charity is really an allotropic
3 modification of the first. If a kind hearted businessman..."
- 4 **JAIDEEP GUPTA:** This is not 140, as Your Lordships are referring.110.
- 5 **JUSTICE DIPANKAR DATTA:** 110. It may be 142, 140 AIR.
- 6 **JUSTICE B.V. NAGARATHNA:** AR. AR version.
- 7 **JUSTICE DIPANKAR DATTA:** It's 110.
- 8 **JAIDEEP GUPTA:** 110, Justice Krishna Iyer.
- 9 **JUSTICE UJJAL BHUYAN:** There is a second category. 106 is the first...
- 10 **PARTHASARATHI SENGUPTA:** AIR are discussing different aspects from...
- 11 **JUSTICE UJJAL BHUYAN:** Para numbering is different.
- 12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes, yes. Kindly focus on...
- 13 **CJI SURYA KANT:** This paragraph starts at "The heart of the trade and business are
14 analogous activity in organization with an eye on competitive efficiency..".
- 15 **PARTHASARATHI SENGUPTA:** Yes.
- 16 **JUSTICE UJJAL BHUYAN:** 110.
- 17 **COUNSEL:** Please go to 107.
- 18 **CJI SURYA KANT:** 107?
- 19 **COUNSEL:** Yes.
- 20 **JUSTICE B.V. NAGARATHNA:** The second species...
- 21 **CJI SURYA KANT:** "The second species of charity."
- 22 **PARTHASARATHI SENGUPTA:** Yes.
- 23 **JUSTICE B.V. NAGARATHNA:** ...102 and charity industry...
- 24 **PARTHASARATHI SENGUPTA:** My Lord, "The second species of charity is really an
25 allotropic modification of the first. If a kind hearted businessman or high minded industrialist
26 or service minded operator, hires employees like his non-philanthropic counterparts and in
27 cooperation with them, produces and supplies goods and services to the lowly and the lost, the
28 needy and the ailing without charging them any price or receiving a negligible return, people

1 regard him as charitable disposition, and his enterprise as a charity. But then, so boots little
2 whether he makes available the products free to the poor, they contribute labour in return for
3 wages and conditions of service. For them the charitable employer is exactly like a commercial
4 minded employer."

5 Now, My Lord, so employer-employee relationship when it comes, I am employed there. I get
6 my wages, I do my duty. You are... you say, you are charitable; so far as I am concerned I have
7 no part of your charity. But I am a part of the establishment.

8 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Carry on.

9 **PARTHASARATHI SENGUPTA:** Yes. "But then, so far as the workmen are concerned, in
10 boots little whether it makes available the products free to the poor, they contribute labour in
11 return for wages and conditions of service, for then the charitable employer is exactly like a
12 commercial minded employer. Both extract hard work, both pay similar wages, both treat
13 them as human machines, cogs and nothing more. The material difference between the
14 commercial and the compassionate employers is not with reference to the workmen, but with
15 reference to the recipients of goods and services".

16 Now, My Lord, a person may be... "a person may be philanthropic trying to do charitable jobs,
17 but at whose cost? At the cost of the labour. The material difference between commercial and
18 the compassionate employers is not with reference to the workmen, but with reference to the
19 recipients of the goods and services. Charity operates not vis-a-vis the workmen, in which case
20 they will be paying a liberal wage and generous extras with no prospect of strike. The
21 beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take
22 note of such extraneous factors." No one can dispute this. But regulates industrial relations
23 between employers and employers, employers and workmen and workmen and workman.
24 From the point of view of the workmen there is no charity. For him, charity must begin at
25 home.

26 From this stance, second group may legitimately and legally be described as industry. The
27 fallacy in the contrary, contention lies in shifting the focus from the worker and industrial
28 activity to the disposal of the end product. Now, My Lord, as far as this is concerned I do it in
29 one way.

30 **CJI SURYA KANT:** Yes.

31 **PARTHASARATHI SENGUPTA:** May I start My Lord?

32 **CJI SURYA KANT:** Yes, yes.

1 **PARTHASARATHI SENGUPTA:** My Lord, so, focus is being shifted from the worker and
2 the industrial activity. Just pause here for a moment. On the one side is a compassionate
3 employer, who at the cost of my labour gives something to poor people. The same labour I put
4 in, if it's not, if it is not a charity by a commercially minded employer. So, the work that I do,
5 question is whether it will go under the heading that charitable labour or simple labour who
6 earn wages for rendering service. My Lord, here we are concerned with industry and therefore,
7 whether it is run by philanthropic organisations or persons or profit-minded employer means
8 little. Why? Why does it mean little? Only thing is that, simply because I say the nature of work
9 determines whether it is an industry or not. It is not the onus of the establishment that
10 determines whether it is industry or not. Therefore, if this is not to be decided by the
11 nomenclature of the employer, but by the jobs rendered, work rendered by the workmen, then
12 My Lord, it is, in my very respectful submission, for Your Lordship's kind consideration, will
13 be going away from the purpose, object of the Act.

14 Now let me just draw Your Lordships' attention to paragraph 132. That means Your Lordships'
15 paragraph will be just one after the (i). Starting with "The heart of trade." "The heart of trade
16 or business or analogous activity... The heart of trade or business or analogous..."

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We got it. We got it.

18 **PARTHASARATHI SENGUPTA:** Yes. "Is organisation with an eye on competitive
19 efficiency..." "

20 **COUNSEL:** My Lord, for the record. Your Lordships says 110. Otherwise the record will
21 show...

22 **CJI SURYA KANT:** No now, now this is 110 only.

23 **COUNSEL:** The record should also show...

24 **CJI SURYA KANT:** Because now Mr. Sengupta is referring to SCC paragraphs.

25 **COUNSEL:** Yes. No but it has gone down to 122 which is AIR current.

26 **CJI SURYA KANT:** That they will probably continue to correct. Yes, Mr. Sengupta.

27 **PARTHASARATHI SENGUPTA:** Yes. "The heart of trade or business or analogous
28 activities organisation with an eye on competitive efficiency by hiring employees,
29 systematising process producing goods and services needed by the community and obtaining
30 monies worth of work from employees. If such be the nature of operation and employer-
31 employee relations which make an enterprise an industry, the motivation of the employer is
32 the final disposal of the products of profit is immaterial." That is why I am emphasising, in my
33 respectful submission this gives a correct exposition of law, judged by the touchstone of the

1 purpose and objective of the Industrial Disputes Act, as also the Constitution of India as it
2 stood then; and as it stands now also. Therefore, the... My Lord, I think I can continue for some
3 time, or I...

4 **CJI SURYA KANT:** Mr. Sengupta, we want to wind up this matter by 4:00.

5 **PARTHASARATHI SENGUPTA:** Yes.

6 **CJI SURYA KANT:** So, we hear ten minutes, Mr. Attorney General also.

7 **PARTHASARATHI SENGUPTA:** Yes.

8 **CJI SURYA KANT:** So, if you want to wind up, you can?

9 **PARTHASARATHI SENGUPTA:** No, actually, I have a lot to say, but time constraint is
10 there, that I understand. Your Lordships are sitting with this case for so many hours.

11 **CJI SURYA KANT:** You kindly give your synopsis also please, if you... If there is any synopsis
12 or any written note you have prepared, that will also help us.

13 **PARTHASARATHI SENGUPTA:** My Lord, I shall, I shall try. I shall try. I shall try. The
14 Nodal Advocate had contacted me and I can hand over it to him, so that it goes to Your
15 Lordships.

16 **CJI SURYA KANT:** Yes, yes, yes, please. If you want to add anything orally, Mr. Sengupta,
17 you can still do it. We can stretch it for five minutes more. There is no issue. If you feel that
18 there is something orally you would like to... any concluding remarks or anything, please. You
19 are most welcome.

20 **PARTHASARATHI SENGUPTA:** Yes. My Lord, just a minute. My Lord, the only thing, I
21 would not trouble Your Lordships with the question that is argued. Six judge, seven judge. I
22 believe that is concluded by Your Lordship's judgment. It's judgment delivered by Five Judge
23 Bench, of which My Lord, Chief Justice was a party.

24 **JUSTICE DIPANKAR DATTA:** That is *Trimurti*.

25 **PARTHASARATHI SENGUPTA:** *Trimurti Fragrances*.

26 **JUSTICE DIPANKAR DATTA:** Yes.

27 **PARTHASARATHI SENGUPTA:** My Lord, there it has been very categorically held that...
28 well, a judgment was delivered on behalf of Justice Banerjee and My Lord, the Chief Justice
29 and Justice Sundaresh and Justice Surya and Justice Gupta concurring. So, their question was,
30 whether this is Five Judge Bench, that's Seven Judge Bench, how could this be done? As was
31 sought to be argued before Your Lordships, paragraph 19 only, I shall refer. "It is settled that

1 the majority decision of a bench of larger strength would prevail over the decision of a bench
2 of lesser strength, irrespective of the number of judges constituting the majority."

3 **CJI SURYA KANT:** Yes.

4 **PARTHASARATHI SENGUPTA:** Therefore, there cannot be any controversy over this,
5 that Six Judge Bench is being overruled by five; nothing of that sort.

6 **CJI SURYA KANT:** Thank you very much, Mr. Sengupta, thank you.

7 **PARTHASARATHI SENGUPTA:** I'm obliged to Your Lordship's for giving me...

8 **CJI SURYA KANT:** We will request you to give the written note also, as per your
9 convenience.

10 **PARTHASARATHI SENGUPTA:** I shall. Since it has fallen from the court, it is my duty.

11 **CJI SURYA KANT:** Thank you very much. Thank you for assisting us and thank you for
12 sparing time for us.

13 **PARTHASARATHI SENGUPTA:** I spare the time for the nation.

14 **CJI SURYA KANT:** Thank you very much. Yes, Mr. Attorney General.

15 **JAMSHED P. CAMA:** My Lord, may I be excused. My Lord, I have just one request, I have
16 three learned juniors who assisted me and they're very keen to have their names in a Nine
17 Judge Bench. So is it all right with Your Lordships if that is done?

18 **JUSTICE UJJAL BHUYAN:** Appearance?

19 **JAMSHED P. CAMA:** Appearance, yes. I'm obliged.

20 **CJI SURYA KANT:** Assistance is always, of course... All of us must acknowledge that.

21 **JAMSHED P. CAMA:** They've been very helpful.

22 **CJI SURYA KANT:** How these youngsters they put their hard work and labour, that must
23 be acknowledged. Thank you so very much, please give their names. I'll ask Mr. Sengupta also
24 he's assisting...

25 **SHEKHAR NAPHADE:** After the Attorney, Your Lordship will give me ten minutes?

26 **CJI SURYA KANT:** No, no, we'll just wind up. Maybe that you are not required to say
27 anything. Yes, Mr. Attorney? In five.

28 **SHEKHAR NAPHADE:** There are two points, there are two...

1 **CJI SURYA KANT:** We have ten minutes. Five minutes for... six minutes for the Learned
2 Attorney and four minutes for Naphade.

3 **SHEKHAR NAPHADE:** So, then... then permit us to file..

4 **CJI SURYA KANT:** No, no, because then...

5 **SHEKHAR NAPHADE:** Then permit us to file additional written statements.

6 **CJI SURYA KANT:** Yes, yes.

7 **SHEKHAR NAPHADE:** I will take two minutes only and file additional...

8 **CJI SURYA KANT:** Additional note can always be submitted. We have already in fact
9 permitted the party that you can always supplement.

10 **CJI SURYA KANT:** Yes, please, Mr. Attorney.

11 **R. VENKATARAMANI:** Your Lordship pleases. We almost heard the last submission, an
12 invitation to the court to go into Marx's surplus theory of value and all those wonderful
13 expositions on what constitutes profit and why accumulation of capital will always happen
14 when there is an exploitation and therefore this legislation, which is apropos a legislation,
15 must keep all that in mind. I will not say no to that. But the question is what are those
16 extraneous factors? What are those extra factors which will... should be either kept out or
17 should be reckoned? In the course of identifying those factors which should be kept out or
18 reckoned, I find ***Bangalore Water Supply*** has gone, the pendulum has swung one extreme
19 side. That's why I said in my opening submission I said, as far as that three tests are concerned;
20 nobody can go beyond those three tests. Take a trade, take a business, take any calling, those
21 three tests will definitely be applicable to them. Therefore, I would say that while all the Triple
22 Tests is a good test when you keep in mind trade, business etc., but that cannot be the end all,
23 and the end all test. And while industries may answer these tests, all activities that meet these
24 tests would not be industries; need not be necessarily industries. Therefore, you fall into a
25 conceptual error, I'm using the word error with a lot of reservations, conceptual error where
26 you say keep the mind of an employer who is with you, the employee is with you, the workmen
27 in your mind. So, all other factors, whether it is a governmental function or a charitable
28 activity, they will all recede to the background. Or the only focus will be, are you employing
29 somebody who is in the who is probably an exploited character. So, exploitation I suppose is
30 something so inevitable in the process of accumulation of capital.

31 But it does not mean that every activity where a person would like to employ somebody,
32 including a government where it wants to discharge some functions constitutionally
33 mandated, there is something uppermost in the mind is not exploitation but to do something

1 beyond exploitation. So, if you focus only on exploitation and anti-exploitation focus on the
2 Act and in a particular case well, if it wants to be the court was to read it in favour of the weaker
3 section, you will definitely read it. The question is whether you should pay bonus, whether it
4 is a fair wage or not, unfair labour practice, you will definitely read it in favour of the workman.
5 But the question is whether the activity itself is an industry or not to say put it entirely on the
6 focus of the weaker section, there could be a problem. Just, I want to flag that.

7 I mean; one can always cite judgments to say that whatever be the nature of a legislation,
8 welfare or tax or criminal law, Court will not probably rewrite the law. You can, in case of *casus*
9 *omissus* will say I will be very careful, but I may still read something into the law. Lord Denning
10 said ironing out the creases. With ironing out the creases will be a very narrow area where you
11 must give a make a meaning to the law where it is not so clear. But when you go beyond that
12 ironing out the creases and do something beyond that, perhaps that would amount to a
13 rewriting and one way justify it saying, well, I found all the honourable judges said in
14 ***Bangalore Water Supply***, what is the legislature doing? It's gone to sleep, what shall we
15 do? So, therefore, I think there's a long compulsion which persuaded the court to reach a very
16 highly humanistic understanding, you put it like that. I may not find fault with the humanistic
17 value which persuades judges to go into that. But then while doing that, if you probably began
18 to read into the statute or write into the statute where you could not have written them at all.
19 In that context I thought ***Bangalore Water Supply*** is a little overread, and that may
20 require some kind of a moderation and certainly one all... That's why I'm not entering into all
21 those detailed discussions of the various provisions of the Act.

22 Now, Your Lordships are invited to look at the Public Utility Services and then various
23 provisions of the Act. Unless an activity qualifies the fundamentalist of being an industry, that
24 because it's a public utility service, the reverse is not necessarily true. Therefore, in those cases
25 where an extra protection, both for workman and an industry was required, you said the
26 following will probably have all this protection, Section 9A, 9B, 9C, Section 22 etc. Therefore,
27 otherwise, the code could have been read written very differently. The Parliament could have
28 said all public industries are to be treated as industries. The court has... Parliament has not
29 done that. And then we have an era where government came into heavy industrialization. It
30 took up industries by itself. They will only talk about that. But then we are no longer... I'm not
31 saying that well because you have moved away from a nationalization era, something
32 drastically different has happened as far as workman is concerned. Workman will always
33 remain a workman; exploitation will always be an exploitation. But notwithstanding that,
34 notwithstanding that, if there are higher levels of looking at it namely a governmental function
35 which deserves a different approach or perspective. Therefore, you have gone into all those
36 Forest Department becoming an Industry. It need not necessarily be so. For a research is

1 purely for the purpose of advancing social and public purposes. You may employ workmen,
2 but then if only the consideration of employing workmen, the larger social purpose of serving
3 the community recedes to the background.

4 Therefore, I only wanted to say, I am not going to read this in my note - but I thought what the
5 Court felt that external factors were not necessarily external factors. And what the Court felt
6 to be excluded, were not necessarily to be excluded. So, I began my submission saying that it's
7 going to be only for the pipeline, because whatever the Court may say will somehow or the
8 other slip beyond the cup. And may have an impact in impact on, on how the future law will
9 be interpreted. The Court will have to be very careful about it, because it's a very as Mr. C. U.
10 Singh said, it's a very unusual case where we are trying to, you know, unravel the mysteries of
11 a... of a particular legislation, one is, it is already dead. So, we are in a very unusual situation,
12 therefore the Court will be very careful that no party in the meanwhile, I think, so I said, "the
13 heart of the Attorney may not necessarily be against the workman." I am certainly saying that
14 if there is a welfare legislation let it be so. But then how do you stretch it beyond the welfare
15 element and say, see something more in that. I would probably end there, but two judgments
16 I would like to cite. And how the Court may not go beyond the text of the law, even in the
17 context of a welfare legislation.

18 Very often, the Court is troubled by the conscious of the Court and say, how do I, how do I deal
19 with the situation when I don't find an answer in the law? The text of the law does not provide
20 an answer. Would that mean that the Court will take a pen and paper and say, "I will rewrite
21 the legislation?" Because we are not talking about 142.

22 Before I read that judgment, Your Lordships will also just pick up page 3 of my Rejoinder note,
23 just quickly. Because everything turns on the first issue I have given my Rejoinder note to the
24 Court. Yes, page 3. Just permit me to quickly scan this page and then I'll go to the judgments.

25 "Whether the test laid down in paragraphs 140 to 144 in the opinion lent by so-and-so, so-and-
26 so is to determine if an undertaking or enterprise falls within the definition of the correct law,
27 it is classified as follows. Triple Test is only one among the factors to be considered to
28 determine whether an activity, not a body, is an industry, or not. It is not a be-all and end-all
29 test. While all industries may answer to the Triple Test, all activities that meet the Triple Test
30 need not, would not, be industries. Para 14(a), (o) uses the word *prima facie* which test is not
31 sufficient to determine whether or not an activity we categorise as the Industry. There are
32 certain other additional factors that deserve to be considered before categorising an activity of
33 the industry under Section so-and-so, which include what is the intent and purpose of the
34 activity, what is the predominant nature of the activity, whether other incidental activities are
35 integrated to the predominant nature of the activity or they are severable, whether the work

1 person is engaged in an incidental activity as opposed to the core or the predominant activity
2 of an establishment like a scientific research. Whether the activity is in furtherance of a
3 constitutional or statutory mandate." These are very important...

4 And then next page. "Whether the incidental revenue generation is relevant or not, profit-
5 making *per se* is irrelevant, but the context in which profit may be present or absent is relevant,
6 specifically to see whether the profit was contemplated or otherwise. For example, in
7 **Gaushala** in paras 90,14.6, it may be generating revenue but that was never contemplated,
8 it's merely an incident of carrying on a charitable activity. Therefore, you shift the focus to the
9 employer, then it becomes an Industry; you keep away, you keep the focus more on the nature
10 and the purpose etc., then it doesn't become an Industry. So, how do you say, which one is to
11 figure. Therefore the choice becomes very difficult. But I would say mere focus on the
12 employee may sometimes be an erroneous proposition. These two judgments, one, this **Dalco**
13 **Engineering, 2010 SCC (4) 378**. So, the question were, what will be the meaning of an
14 establishment under the...

15 **CJI SURYA KANT**: Which one? The second?

16 **R. VENKATARAMANI**: Disabilities legislation.

17 **CJI SURYA KANT**: What is the other one?

18 **R. VENKATARAMANI**: Whether a private company would also be considered an
19 establishment for the purpose of the Disabilities Legislation. Let me straightaway go to
20 paragraphs... you'll just mark, make a note 28 at running page 390 of the report. Then just
21 below that paragraph 29. "The learned Counsel, next relied upon the principle, that words in
22 a social welfare legislation should receive liberal and broad interpretation stated by this court
23 in Workman versus so and so. Nobody can disagree with that proposition."

24 Then kindly turn to the next page by page, paragraph 30 and 31. "The learned counsel next
25 relied upon the following observation in **Kunal Singh vs. Union of India** with the Court
26 referring to the very section reconsideration observed this. Section 47 contains a clear directive
27 the employer shall not dispense with or reduce in rank an employee who acquires a disability
28 during the service. In construing a provision of social beneficial enactment that too dealing
29 with disabled persons intended to give them equal opportunities, protection of rights and full
30 participation, the view that advances the object of the Act and serves its purpose must be
31 preferred to the one which obstructs the object and paralyses the purpose of the Act." We go
32 to paragraph 31. "We agree that the socio economic legislation should be interpreted liberally.
33 It's also true that courts should adopt different yardsticks and measures for interpreting socio-
34 economic statutes as compared to penal statutes and taxing statutes. But a caveat. The courts

1 cannot obviously expand the application of a provision in a socio economic legislation by
2 judicial interpretation to levels unintended by the legislature, or in a manner which militates
3 against the provisions of the statute itself or against any constitutional limitation." In this case,
4 so and so, etc. Therefore para 32 is what they say and the facts of the case how they apply it.

5 Then the other judgment is one in the context of Contract Labour Regulation Abolition Act, a
6 Five Judge Bench in *Steel Authority of India*, para 105.

7 **CJI SURYA KANT:** Yes.

8 **R. VENKATARAMANI:** Para 105. "The principle that a beneficial legislation needs to be
9 construed liberally in favour of the class for whose benefit it is intended, does not extend to
10 reading in the provisions of the Act what the legislature has not provided whether expressly or
11 by necessary implication, or substituting remedy or benefits for that provided by the
12 legislature. We have already noticed above the intendment of the CLRA Act that it regulates
13 the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of
14 contract labour system by the appropriate Government on consideration of factors
15 enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the
16 presence of some or all those factors, in our view, provide no ground for absorption of contract
17 labour and so and so." So, that's why I read the Section 10 of the Act. Therefore, today I think
18 the court is not being called upon to construe it in the context of a particular dispute as to
19 whether who should win in the context of our labour practice or an unfair treatment of a
20 workman, so on and so forth. Therefore, in those, all those contexts, court will say, I'll read it
21 as liberally as possible. When it comes to the question of reading the statute itself, for the
22 purpose of understanding, where do we land within the statute? So, those considerations may
23 not be strictly relevant, except to the extent that we will not completely close our mind to that.
24 Therefore, if he is... as I said, the pendulum can swing either way, there's some problem.

25 So, Your Lordships have faced those three issues. When I start beginning to work in this
26 matter, I thought how will you answer this question to be very frankly? I asked myself a
27 question, how is the court going to answer the first question if the court was to simply say it is
28 whether it is good law or not? So, if it is say usually for a dead purpose namely, we are going
29 to bury this case, 47 is over, then only for the purpose of the pipeline case we're going to answer
30 it, I think the answer will not be very difficult to answer. But I don't know whether it will cast
31 a shadow too long on what may remain for the future; therefore, Your Lordships must be very
32 careful about what to do with that. I just want to add the word of caution. And it's been a great
33 rewarding experience for me. My wonderful team worked for more than 15-20 days and day
34 and night. But finally we are closing. My last, long experience and acquaintance with Justice
35 Krishna Iyer. Notwithstanding. I know we'll talk about all that here; another time to talk about

1 that. And I know where his heart was and I know why his mind so compassionate, so
2 compassionate in everything he did.

3 **CJI SURYA KANT:** We talked about that.

4 **R. VENKATARAMANI:** In everything he did, I know why it went this way. I'm not... I can't
5 be a commentator on how he felt and how compassion worked in his mind but since all that is
6 today history. But unfortunately, if you had to talk about why in an LPG situation can we close
7 our eyes to all that? I may say with a lot of reservation, we need not necessarily close our eyes
8 to that. Because I again before I worked on my written submission, I had to go back into the
9 Government, share my views and ask their considerations and their own reflection, and the
10 Government said the Government is certainly not anti-labour; Government is certainly not
11 anti-labour. Government concerned and as far as the Directive Principles of State Policy are
12 concerned and the welfare of labour is concerned, they will go at any length to find out that.
13 The labour welfare is certainly taken care of. But, if you have difficulties in having a Forest
14 Department to be declared an industry, an Irrigation Department to be declared an industry
15 or an ICMR to be declared an industry, there are very, very serious concerns. We are moving
16 towards a globalized world where we do not know how you are going to manage our domestic
17 economy therefore all that caution will probably be kept in mind. I'm grateful to Your
18 Lordships.

19 **CJI SURYA KANT:** Thank you, thank you, Mr. Attorney. Mr. Naphade?

20 **R. VENKATARAMANI:** I don't propose to read on sovereign...

21 **CJI SURYA KANT:** You can complete in maybe a minute.

22 **SHEKHAR NAPHADE:** And I will stick to it.

23 **R. VENKATARAMANI:** I don't propose to read on sovereign functions it is already there.
24 My Lords, kindly read it.

25 **SHEKHAR NAPHADE:** So, two points which warrant a reply. Number one, Article 142
26 prospective overruling. Now, take a case if Your Lordships ultimately accept our contention,
27 and still Your Lordships apply the principle of prospective overruling, then it will be a
28 judgment in my favour, but the decree will be against me. This can't be. That will be an exercise
29 in futility. The second reason which I say is that this doctrine started from *Golaknath* 1967.
30 The court was conscious of the fact that if that entire agrarian reforms and other legislation
31 was struck down, it would have led to chaotic conditions in the country. Therefore, the
32 situation was radically different than what we are faced with. Here it's a question of individual
33 rights. It won't lead to any chaos, that is my answer to their...

1 Second is, Ms. Jaising raised a very pertinent point which I must answer. She referred to the
2 first schedule and pointed out to Your Lordship, for example, India Government mints at the
3 security press. These are actually sovereign functions. Now, if Your Lordships notice that these
4 are entries which are added by the Central Government. These are not original entries. Now,
5 if Your Lordships look at the definition...

6 **CJI SURYA KANT:** Again these are from 2012 to 2018.

7 **SHEKHAR NAPHADE:** Correct, My Lord. Now these are the government's understanding.
8 The question whether that constitutes an industry or not? If Your Lordships hold that
9 sovereign functions are out, then of course this entry will be a nullity. Because it's an entry
10 which is made, but I have a better answer apart from this. Now, the word "Industry" is used...
11 if Your Lordships look at the definition of public service, the last item...

12 **JUSTICE DIPANKAR DATTA:** In the First Schedule, it says "the industries which may be
13 declared."

14 **SHEKHAR NAPHADE:** Yes, I'm referring to that. I'm referring to the word 'industry'. Now
15 my answer to that is, that there is always a presumption that the same word used in the same
16 statute may carry a same meaning very well, but it's a weak presumption, it will depend upon
17 the context, because every definition says subject to the context. Now kindly look at Section
18 22, because this has to be read with Section 22. The idea is to prohibit strikes and lockouts.
19 These are vital economic activities and that is why it need not be an industry as defined under
20 Section 2(j). The industry as defined in Section 2(j) as I pointed out, has commercial rules and
21 this is something beyond that. So, therefore, that is my second answer. And the third is that as
22 far as the distinction between the Labour Law and the Service Law, the distinction lies in this
23 that the Service Law is entirely Statute Law. So, therefore, there is hardly any scope. I'm not
24 saying that there is no scope at all, but there is hardly any scope for an industrial adjudicator
25 to adjudicate.

26 So therefore, Your Lordship, will consider this in the light of while considering the definition
27 of industry, that's all. And some details will have to be given which if Your Lordship so permit,
28 we will put them in writing. Grateful. Yes.

29 **INDIRA JAISING:** May I have two minutes of your time, My Lord?

30 **CJI SURYA KANT:** Yes.

31 **INDIRA JAISING:** Two minutes not more than that, I promise you.

32 **SHEKHAR NAPHADE:** One minute, Ms. Jaising, one minute. I'm about to complete. I have
33 one more minute left.

1 **INDIRA JAISING:** What is this? You're taking away from my time.

2 **CJI SURYA KANT:** That means you'll grant independence.

3 **SHEKHAR NAPHADE:** Yeah. So, ultimately, there was no answer to Triple Test, how it
4 originates. I pointed out to Your Lordship this is borrowed straight from Australia, which
5 doesn't gel into, doesn't fit into the scheme of ID Act, but that apart, their argument was that
6 since ***Bangalore Water Supply*** is followed in several judgments, that is hardly a ground.
7 If the judgment is erroneous, it is erroneous, merely because it is followed umpteen times is
8 no ground to say that it's a correct judgment. This defies logic. That's all, My Lords. Thank
9 you.

10 **INDIRA JAISING:** My Lords, I'll answer that last point also with reference to decided cases
11 of this Court. To answer his last point, this Court has recorded that our Industrial Disputes Act
12 is based on the Australian Act, because I was very also curious why normally this Court cites
13 United Kingdom decisions, because we belong to the Common Law tradition. Of course,
14 Australia is also part of the Common Law tradition, but I was wondering why. In two cases
15 right from ***Banerji*** onwards it is the Australian cases which are referred to and the answer to
16 that is because our law is based on the Australian Law. And I'll put it in writing and give it to
17 you from where I'm getting this information. So, no magic about referring to Australian Law.
18 It is there. It is the parent of this Act. It was a Commonwealth Act which was applicable to the
19 entire Commonwealth, My Lord, from which this Act has been borrowed, leave that aside. My
20 Lord, as far as the Learned Amicus is concerned, he made reference to Chapter V-B, of the
21 Industrial Disputes Act. Just take it for one second with you. Now, and he referred to the
22 definition of Undertaking in Chapter V-B, to convince you that you take this definition and not
23 2(p). Now the answer to that is, in Chapter V-B gives a separate definition of Undertaking over
24 and aside from the definite meaning that you're giving it in 2(b). The reason is it offers certain
25 benefits, such as retrenchment compensation, lay-off compensation and they want to exclude
26 certain establishments. So, V-B is excluding establishments, which would otherwise be
27 covered by the definition in 2(p); therefore, it cannot be an aid to interpret the meaning of
28 Undertaking in 2(b). That Your Lordship, will make a note of that.

29 Secondly, as far as Mr. Cama is concerned, he said let's use our "commonsense." And he used
30 a rather obscene Hindi word. He said '*dhandha*'. Now if you want to use the expression like,
31 first of all, judgments of this Court have said, you cannot use your commonsense. These
32 definitions are words of art, what we call these are words of art which have a legal meaning
33 and I will show that to you from ***Banerji*** . Para 13. Just read para 13. 1-3, in ****Banerji***. This
34 specifically say, you cannot use your commonsense in interpreting these words. In the
35 ordinary non-technical sense, according to what is understood by the man on the street; that's

1 not what this court uses. So, My Lord, the word and let me explain why because the word,
2 'dhandha' for example can include even prostitution. Is that a business? This court has held
3 prostitution as *res extra commercium*.

4 **JUSTICE SATISH CHANDRA SHARMA:** But he has not used it in that exact sense.

5 **INDIRA JAISING:** It does include. I'm sorry. This court has said it is *res extra commercium*.

6 **JUSTICE SATISH CHANDRA SHARMA:** I have studied Hindi well too much.

7 **INDIRA JAISING:** No, you can exclude even...

8 **JUSTICE SATISH CHANDRA SHARMA:** It doesn't make sense what you're saying.

9 **INDIRA JAISING:** My Lord, even from common sense words, there are exclusions. This
10 court says it is not... it is *res extra commercium*, if you want, I'll give you the judgments. It's
11 not considered an industry, alcohol is considered *res extra commercium*. Therefore My Lord,
12 where is the question of using words like that, you have... these are words of art, used in a
13 statute, which have to be given a statutory meaning otherwise the whole concept of having
14 legal fictions will go out of the window. You can't have an artificial definition, but you can have
15 an artificial definition by law, that is the second point. My Lord, if I have offended you, please
16 ignore that, please ignore what I had to say, I'm sorry. I should have used *res extra*
17 *commercium* instead of saying anything. Now the third point he raised, he said... no, a
18 question fell from the court. I think the question was, what about the supervisors? Somebody
19 asked the question. 'Protection'. My Lord, Your Lordship pass the question 'protection'. His
20 answer was supervisors are not protected, it is true. Managerial category is not protected by
21 this Act. Managerial category still follows the law of hire and fire. Tomorrow...

22 **CJI SURYA KANT:** That is expressly excluded.

23 **INDIRA JAISING:** Yes, that's no answer. It's no answer, My Lord, to say that we don't... we
24 should not get the protection of the ID Act. The legislature has decided who gets protection,
25 who does not get protection. So, therefore, My Lord, the mere fact that supervisors are
26 excluded, it doesn't mean the workers should be excluded.

27 Now, My Lord, the last thing is the word 'industry'. Now supposing I say, this honourable court
28 is very industrious in the way in which they go about their work. Are you performing an
29 industry? No. Again you come to the same conclusion that words must carry the meaning in a
30 statute in relation to an organic whole. You look at the statute as a whole. The word
31 'industrious' is capable of many meanings, but you will choose the meaning which is relevant
32 to this statute, to the interpretation of the statute. Object and purpose.

1 And finally, My Lord, a question from Justice Bagchi, about adding value. My Lord, that is the
2 third limb of the Triple Test which has not been discussed. It says production of goods and
3 services of value to the wishes and needs of the community, that's where value is coming. If
4 you give me something which is of interest to the community, then you come under the Triple
5 Test. That is why spiritual is excluded. Spiritual is for me, individually. So, My Lord, we have
6 not discussed, value is added by releasing what you do to the community at large, in public
7 interest. So, you look at three arms of the trust together, My Lord. That's all I want to say.
8 Thank you very much.

9 **CJI SURYA KANT:** Thank you very much.

10 **R. VENKATARAMANI:** Keep in mind that reference order, it's important because the three
11 judges bench where Justice Krishna Iyer was there... then the matter went, because
12 *Safdarjung* was six; that went before seven judges, that's how it happened. I thought
13 important to keep that in mind. And *Banerji* was Chandrasekhara Iyer, *Bangalore Water*
14 *Supply* is Krishna Iyer.

15 **JUSTICE DIPANKAR DATTA:** When you prepare your notes and hand this over to us,
16 please take note of one decision...

17 **SHEKHAR NAPHADE:** Could Your Lordships repeat that?

18 **JUSTICE DIPANKAR DATTA:** *75, Volume II, SCC 847*. I was wondering why Justice
19 Bhagwati being on the bench in *Bangalore*, did not pen an opinion. This is Justice Bhagwati's
20 opinion and whatever Justice Iyer has written, perhaps is inspired from this decision. Look
21 into it.

22 **INDIRA JAISING:** My Lord, just one thing Mr. Sengupta gave you a...

23 **R. VENKATARAMANI:** I thought...

24 **INDIRA JAISING:** My Lord, just let me just tell you this piece of information. Mr. Sengupta
25 referred to a judgment...

26 **SHEKHAR NAPHADE:** Sir, permit us to file within one week, yes.

27 **CJI SURYA KANT:** Yes, instead of one week we can grant you slightly more time. After small
28 breaks, we are opening on 5th. So, request that in the opening on 5th or by 6th of April.

29 **SHEKHAR NAPHADE:** Very well, sir.

30 **INDIRA JAISING:** My Lord, I just want to let you know Mr. Sengupta referred to a
31 judgment, it is cited in paragraph 4 of Justice Banerjee's judgment that is *Western India*
32 *Match Company*. Unfortunately, it is not reported in SCC, SCR or AIR. None of them

1 reported. But it's available in the judge's library, My Lord. My Lord, kindly call for that
2 judgment.

3 **R. VENKATARAMANI:** I must thank the registry for able to recover this order, the
4 reference order. Yesterday night late time we were able to get it back, I thought. I must thank
5 the registry for that.

6 **CJI SURYA KANT:** Thank you very much. Thank you for your cooperation.

7

8

9

10

END OF DAY'S PROCEEDINGS