

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 897 OF 2002**

**IN THE MATTER OF:**

STATE OF UTTAR PRADESH

...APPELLANT

Versus

JAI BIR SINGH

...RESPONDENT

**NOTE ON RELEVANT JUDGMENTS ON BEHALF OF AMICUS CURIAE- MR.**

**J.P. CAMA**

**1. D.N. Banerji v. P.R. Mukherjee; (1952) 2 SCC 619**

- Question before the court was whether municipality was an industry
- **Para 13,14:** meaning of the term industry considered. It was held that the simple meaning of the term industry as commonly understood has to yield to the wider meaning adopted by the legislature to meet societal demand of resolving disputes.
- **Para 17:** the definition goes beyond what is considered strictly as trade or business. This is because of the term “undertaking” in the first part of the definition and “industrial occupation or avocation” in the second part.
- **Para 19:** investment of capital or profit earning motive is not a *sine qua non* or necessary element in modern conception of industry.
- **Para 20:** An undertaking or service will continue to be an industry even when capital is replaced by tax.
- **Para 26:** dispute between municipality and its employees in branches which may be analogous to trade or business are covered by the Act.

**2. Corporation of the City of Nagpur v. Employees (1960) 2 SCR 942**

- Question was whether activities of Corporation of the city of Nagpur were industry.
- **Para 10:** Act is not intended to reach the personal services which do not depend upon the employment of a labour force. The court opined that the history of

labour legislation showed that it was intended to ameliorate the conditions of service of labour in organized activities than anything else.

- **Para 11:** However, wide the definition of “industry” maybe it cannot include or regal sovereign functions of State.
- **Para 13:** *D.N. Banerji* explained. It was held that even activities not resembling trade or business covered. Also, although the word “undertaking” lies between “trade” and “business” it need not be read *ejusdem generics*. Otherwise there was no need to use that word separately from business or trade.
- **Para 14:** Test laid down by Australian courts considered. If the activity done by individual is an industry it will be an industry when it is done by the corporation.
- **Para 15:** *Quid pro quo* argument rejected. Monetary consideration is not an essential condition.
- **Para 16:** Barring the regal functions, if such activities, if taken by individual would be industry then they would equally be industry in hands of municipality. The entire organisational activity will be an industry. Integrated activities cannot be separated.
- Para-16: integrated activities of the municipality cannot be separated to take in some under the definition of ‘industry’ and exclude others from it.
- Para 17: **Predominant activity test laid down.**
- Para 18: **CONCLUSIONS:**
  - a. There are two parts to the definition of industry. Also, industry must be an organized activity and not one which pertains to private or personal employment.
  - b. Regal functions must be confined to legislative power, administration of law and judicial powers.
  - c. If services rendered by individual or private person is an industry, it would equally be so in the hands of corporation.
  - d. If department or a municipality discharges industrial and non-industrial activities, the dominant function shall be the criteria for the purposes of the Act.

### 3. *State of Bombay v. Hospital Mazdoor Sabha: (1960) 2 SCR 866*

- Issue was whether hospital is an industry.

- **Para 9:** the rule of *noscuntur a sociis* cannot be applied to interpret the term undertaking. The legislature has deliberately used wider words.
- **Para 11:** popular concepts of trade or business cannot be applied.
- **Para 12:** **It is necessary to draw a line otherwise all the services will be brought under the ambit of the term.**
- **Para 13:** question of capital investment and profit motive irrelevant.
- **Para 14:** sovereign/regal activities are excluded.
- **Para 16:** Hospitals will be industries if it is run by private individuals and will therefore will be industry if run by Government. The character of the activity has to be considered. It does not matter who does the activity.
- **Para 17:** Possible working principles: a. activity systematically or habitually undertaken for production of goods or for rendering material services. b. cooperation between employer and employees. Must not be casual.
- **Para 18:** *Quid pro quo* argument rejected.
- **Para 19:** Section 2(n) i.e. definition of public utility services read along with the Schedule of the Act considered to come to the conclusion that Hospital is an industry.

4. **National Union of Commercial Employees and Anr v. MR Meher 1962 Supp (3) SCR 157 (Solicitor's case)**

- Issue was whether a solicitor's firm was an industry.
- **Para 3:** issue to be decided as per decision in *Hospital Mazdoor Sabha*, wherein also the court observed that a line will have to be drawn while giving wide meaning to the terms in the definition of industry under section 2(j).
- **Para 4:** the test in *Hospital Mazdoor Sabha*, to draw this line. Essential tests a. cooperation between employer and employee; b. object is to satisfy material needs c. organised in a manner of trade or business d. must not be casual.
- **Para 5-6:** In *Hospital Mazdoor Sabha* court relied upon section 2(n) i.e definition of public utility service and schedule to hold that JJ Hospital was an industry.
- **Para 8:** no distinction can be drawn between an individual solicitor and a firm of solicitors.

- **Para 9:** Industry is cooperation of capital and labour and employer and employee for production of goods and services. This cooperation must be direct and essential.
- **Para 10:** example of textile mill given to show how the cooperation of employer and employees therein is direct.
- **Para 11:** example of hospital given to show how cooperation therein also is direct.
- **Para 12: case of solicitor's firm considered. It was held that service therein is essentially individual depending on the knowledge of the solicitor. The other subsidiary work is to assist the solicitor and has no direct relation with the service. Work of typist etc. is not directly connected with service. The cooperation has no direct relation to professional service. Therefore held, solicitor firm is not an industry.**
- **Para 13:** Liberal professions have special features. Aspect of disputes between capital and labour to produce commodities or to render service is absent.  
**NOTE:** Justice Krishna Iyer in *Bangalore Water*, overruled this judgment in Paragraph 86. It was held that a doctor or a lawyer cannot function without the help of the support staff. It was held that claim of exclusion of the liberal professions is unwarranted. This may open flood-gate of exclusions. (Para 86) Solicitors' case overruled. But single lawyers, rural medical practitioners are excluded because there is no organised labour in such employment. (Para 88).

##### 5. University of Delhi & Anr. v. Ram Nath: (1964) 2 SCR 703

- Issue was whether educational institutes are industries.
- **Para 5:** In educational institutes the cooperation is between the institute and the teachers who are not workmen. Disputes between them is not covered by the Act. The Act could not have contemplated education institutes to be industries for the benefit of small number of subordinate staff.
- **Para 6:** Incongruous to speak of the education process in terms of industry.  
**NOTE:** Justice Krishna Iyer in *Bangalore Water*, overruled this judgment. Justice Krishna Iyer in Para 89 to 101 considered whether education is an industry. The Court considered the judgment in *University of Delhi*, wherein it was held that education is not an industry because teachers are not workmen and because education cannot be assimilated with the position of trade, business

or calling. The court disagreed with this view and held that education is an industry. (Para 93). It was held that the test is not “*the pre-dominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity*” (para 95). It was further held that ancillary activities of the University such as Administration, printing press, running of buses, will be an industry (Para 96)

6. **Secretary, Madras Gymkhana Club v. Management of the Gymkhana Club (1968) 1 SCR 742**

- Issue was whether Gymkhana Club was an industry.
- **Para 10:** tests formulated earlier. a. activity must be organised. Undertaking must be analogous to trade, business or calling. b. investment of capital or profit motive not relevant. Relation of employer employee required for production of material goods or services.
- **Para 11:** *Hospital Mazdoor Sabha* examined. It was observed “*An industry is this said to involve cooperation between employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily for profit.*”
- **Para 16:** Cooperation/nexus/partnership test held to be incorrect. The nature of employer’s occupation is to be seen. The cardinal test is to find out industry from the first part of the definition.
- **Para 19:** Two parts of the definition considered. The first part denotes what an industry is. Second part on its own cannot define industry. Second part only gives an extended connotation.
- **Para 23:** the term undertaking is considered. Distinction has to be drawn between commercial undertakings producing material goods and services and other non-commercial undertakings. On this basis the court differentiated between the services of a typist in the Solicitor’s firm and in the building corporation and also that of a bus driver in a municipality and in a university.
- **Para 24:** undertaking must be analogous to trade or business.
- **Para 25:** activity must not be casual but must be systematic. The work must be productive and the workmen must be following an employment.

NOTE: Justice Krishna Iyer in *Bangalore Water*, overruled this judgment. In Para 115 to 125, the court considered the application of the term industry to

clubs. The ratio in *Gymkhana* judgment that club is not an industry because it belongs to its member and does not have an existence apart from the members was rejected. (para 124) However, in Para 78, Justice Krishna Iyer approved the reasoning, in *Gymkhana Club*, that principle of partnership between employer and employee and doctrine of direct nexus is not relevant.

7. **The Management of Safdurjung Hospital v. Kuldeep Singh Sethi; (1970) 1 SCC 735**

- Question before the court was whether the hospitals therein can be regarded as industries.
- **Para 6:** It was argued that the ratio of *Hospital Mazdoor Sabha* case was shaken by the ratio of *Madras Gymkhana*.
- **Para 7:** *Madras Gymkhana* relied on the statute for guidance.
- **Para 12:** Held: industry is a collective enterprise of employers and employees.
- **Para 13-14:** But every employment not industry eg. Domestic staff, public officials. Definition of the term industry has to take colour from the definition of the term workmen.
- **Para 17:** Industry includes undertakings. Undertakings must be analogous to trade or business for the production of material goods or material services. Professionals are not industries because they are not engaged in an occupation in which employers and employees co-operate in the production of commodities or arrangement for their services cannot be described as material services.
- **Para 18:** Material services considered. It involves cooperation between employers and employees. Emphasis is not what is done but upon the productivity of a service organised as an industry and commercially valuable. Services of the professionals is not of commercial character. In commercial services something is brought into existence quite apart from the benefit to particular individual. Production of something is described as material services.
- **Para 21:** For industrial disputes there must be a relation of employers and employees associating together. Enterprise must be analogous to trade or business.
- **Para 23:** In hospitals running as a business or in a commercial way there may be elements of industry.

- **Para 24:** discussed why *Hospital Mazdoor* incorrect. It considered both parts of the definition in isolation. It held that as hospitals can be run by private individuals, the government hospitals should bear the same character.
- **Para 25:** view taken in *Hospital Mazdoor* extreme and unjustified.
- **Para 34-38:** On facts, 3 hospitals held not to be industries.  
NOTE: Justice Krishna Iyer in Para 130-137 of *Bangalore Water*, overruled this judgment. It was held that running of hospitals was not a sovereign function but part of welfare activities and thus it is an industry. (Para 132). It was held that the judgment in Safdarjung Hospital was contrary to the reasoning stated therein as the court held that profit motive was not relevant but the non-profit nature of the hospitals was relied upon to hold that they were not industries. (Para 136)

8. **Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) 2 SCC 213**

**Justice Krishna Iyer**

- **Para 12:** functional focus is Part IV of the Constitution-a worker-oriented statute must receive a construction where the keynote thought must be the worker.
- **Para 13:** rule of *noscitur a sociis* applied to give restrictive meaning to the term undertaking.
- **Para 17:** the meaning of the term industry should be decoded from the Preamble of the Act which refers to '*the investigation and settlement of industrial disputes*'. The term connotes organised, systematic operations and collectively of workmen co-operating with their employer in producing goods and services for the community.
- **Para 23:** The court covered the kinds of establishment which would fall under the coverage of 'industry'
- **Para 36:** conclusion of *Banerji* explained, government and municipal and statutory bodies, charitable purposes industries. Undertakings sans profit motive also industries.
- **Para 37:** The *Banerji* emphasises on activity oriented and not motive based approach. "*If the mutual relations, the method of employment and the process of co-operation in the carrying out of the work bear close resemblance to the organisation, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not.*"

- **Para 52-54:** The Court accepted the ratio in *Corporation of Nagpur*, that even non-trade activities like municipal functions can be industry. Profit making not relevant.
- **Para 56-60:** Education not excluded from the term industry.
- **Para 63:** the test in *Corporation of Nagpur* for ‘analogous’ to trade and business considered. “*the ‘analogous’ species of quasi-trade qualify for becoming ‘industry’ if the nature of the organized activity implicit in a trade or business is shared by them.*” Profit motive and quid pro quo theory dismissed.
- **Para 68:** the three tests in *Corporation of Nagpur* are (a). the paramount and pre-dominant duty criterion; (b) the specific service being an integral, non-severable part of the same activity and (c) the irrelevance of the statutory duty aspect.
- **Para 69-72:** the court considered the ruling in *Hospital Mazdoor Sabha*
- **Para 73** onwards, the court discussed Liberal Professions. Gajendragadkar J’s opinion in *Solicitors’* case and Hidayatullah C.J’s opinion in *Gymkhana Club Employees’ Union* case was considered. Although both agreed that liberal professions be excluded, both contradicted each other. The opinion in *Gymkhana Club Employees’ Union* case was accepted. It was held that “*There is no need for insistence upon the principle of partnership, the doctrine of direct nexus or the contribution of values by employees.*” On this basis the liberal professions cannot be excluded. (**Para 78**). Claim of exclusion of the liberal professions in unwarranted. This may open flood-gate of exclusions. (Para 86) *Solicitors’* case overruled. But single lawyers, rural medical practitioners excluded because there is no organised labour in such employment. (Para 88).
- **Para 89-101:** The Court considered whether education is an industry. The Court considered the judgment in *University of Delhi*, wherein it was held that education is not an industry because teachers are not workmen and because education cannot be assimilated with the position of trade, business or calling. The court disagreed with this view and held that education is an industry. (Para 93). It was held that the test is not “*the pre-dominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity*” (para 95).
- **Para 102-111:** the court considered whether charitable institutions are industry? Three types of charities mentioned in Para 104. The third category i.e. where

substantial nature of the work, is rendered by voluntary wageless sishyas, is not an industry because the relation between the participants is non-industrial. (para 110). “*We must look at the pre-dominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry.*”

- **Para 112-114:** The court considered the application of the term industry in research field. It was held that research institutions albeit run without profit motive are industries.
- **Para 115-125:** The court considered the application of the term industry to clubs. The ratio in *Gymkhana* judgment that club is not an industry because it belongs to its member and does not have an existence apart from the members was rejected. (para 124)
- **Para 126-129:** Held societies are industries.
- **Para 130-137:** the court rejected the ratio of the *Safdarjung Hospital case*.
- **Para 138-139:** Summary of how the law on the definition of industry evolved from *Banerji* to *Safdarjung Hospital case*.
- **Para 140-143:** triple tests laid down.

**Chief Justice Beg-** Para 146 to 169-He agrees with Kishan Iyer J. However, to artificially exclude state run institutions not correct (Para 168)

**Chief Justice Chandrachud -Para 170-183**

- **Para 178-179:** no justification in excluding sovereign functions.
- **Para 180:** charitable activities are industries.
- **Para 181:** solicitor’s activities are covered by the word industry. Principle of direct proximate cooperation between employer and employee are not warranted from the definition as these are impossible to apply.
- **Para 182:** clubs covered by the definition.

**Justice Jaswant Singh -Para 184-187**

- **Para 185:** *we are of the view that despite the width of the definition it could not be the intention of the legislature that Categories 2 and 3 of the charities alluded to by our learned Brother Krishna Iyer in his judgment, hospitals run on*

*charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should fall within the pale of the definition. We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the co-operation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community. It is needless to emphasize that in the case of liberal professions, the contribution of the usual type of employees employed by the professionals to the value of the end product (viz. advice and services rendered to the client) is so marginal that the end product cannot be regarded as the fruit of the co-operation between the professional and his employees.*

**9. Des Raj v. State of Punjab: (1988) 2 SCC 537**

- **Para 13:** Irrigation Department was held to be an industry.

**10. Chief Conservator of Forests v. Jagannath Maruti Kondhare (1996) 2 SCC 293**

- **Para 1:** The question before the court was whether the forest department of the state government was an industry.
- **Para 5-7:** The Court referred to the dominant nature test laid down in Para 143 of *Bangalore Water*.
- **Para 7:** Certain severable parts are industry.
- **Para 8-10:** Court noted the argument that sovereign functions be extended beyond the three inalienable functions even to welfare activities.
- **Para 11-12:** the Court noted that the demarcation between the sovereign functions and non-sovereign functions has largely disappeared.
- **Para 13:** The court held that if welfare functions are excluded from the definition of 'industry' then the ratio of *Bangalore Water* will be eroded.
- **Para 16,17:** On facts it was held that the forest Department was not performing inalienable functions of the state and was therefore an industry.

**11. Physical Research Laboratory v. K.G. Sharma (1997) 4 SCC 257**

- Question before the court was whether the physical research Laboratory (PRL) was an industry. It's functions are discussed in Para 6.
- In Para 8, after discussing the principles of *Bangalore Water*, it was held that the principles therein were formulated as the definition of the word industry were found to be vague and while interpreting the term undertaking, calling, service, the principle of *noscitur a sociis* was applied, and it was held that they were industry only if they are found analogous to trade or business. It was also noted that the principles therein were not exhaustive either as regards what can be said to be sovereign functions or as regards the other aspects dealt with by the courts.
- In **Para 10**, the Court noted that the change in the concept of sovereign functions of a constitutional government has to be kept in mind.
- In **Para 12**, it was noted that PRL does not produce goods or services and its research is not sold. Its object was to obtain knowledge and not to render service. In **Para 13**, it was concluded that PRL is not an industry because it is not an undertaking analogous to business or trade.

**12. General Manager Telecom v. A Srinivas Rao (1997) 8 SCC 767**

- The question was whether telecom department of the government was an industry.
- The decisions in *Sub-Divisional Inspector of Post v. Theyyam Joseph* (1996) 8 SCC 489 and *Bombay Telephone Canteen Employees Assn v. Union of India* (1997) 6 SCC 723 were overruled. In the latter judgment it was observed that if *Bangalore Water* is strictly applied, the consequence will be catastrophic. [ **NOTE:** The reasoning in *Bombay Telephone Canteen* was that the meaning of the term State/Authority has undergone substantial change. Remedy under Article 226, 32 is available to employees of the organisations brought under the ambit of Article 12. If this organisation is considered an industry then remedy will be section 10 of the ID Act and not Article 226. This will be catastrophic for the employees]
- It was held that Telecommunication Department of the Government of India was an industry. It was held that the judgment in *Bangalore Water* was binding.

13. **All India Radio v. Santosh Kumar (1998) 3 SCC 237**

- All India Radio and Doordarshan held to be industry as they carried out commercial functions like advertising.

14. **Coir Board v. Indira Devi (1998) 3 SCC 259**

- Question was whether Coir Board set up for the development of coir industry was an industry.
- Para 5: issue in the definition of the term industry arises because of the term undertaking which has led to judicial expansion of the meaning.
- **Para 6-8:** Discussion as to how the term has been expanded based on judicial decisions. Widest interpretation given because it is a welfare legislation.
- **Para 9-12:** decisions where wider meaning not given are discussed.
- **Para 13-16:** Decision in *Bangalore Water* considered.
- **Para 19-24:** necessary to examine *Bangalore Water* because of the difficulties being faced.

**NOTE:** However, a three judge bench refused to make the reference to a larger bench. [(2000) 1 SCC 224]

15. **Agriculture Produce Market Committee v. Ashok Harihuni (2000) 8 SCC 61**

- Question was whether statutory APMC was an industry or was it exempted on the ground of carrying out sovereign functions.
- **Para 19:** services of statutory bodies not excluded from the term industry.
- **Para 21:** sovereign functions restricted to inalienable functions of the state like defence, foreign affairs. Pith and substance of the statute is to be considered to find out if it is an industry.
- **Para 26:** After considering the provisions of the Act it was held that these functions can be carried out by private person and are therefore not sovereign functions.
- **Para 28:** Some employees being government servants makes no difference.
- **Para 29:** Section 2(a) referred to where definition of appropriate government is noted. This section refers to statutory bodies. This shows the intent of the legislature.

- **Para 32:** The term sovereign functions has become very wide but they refer to inalienable government functions. Examples given.

**16. *Som Vihar Apartment Owners' Housing Maintenance Society Ltd v. Workmen (2002) 9 SCC 652***

- The Appellant society was formed to maintain cleanliness in the apartments and to render certain other services personally to the apartment-owner themselves. It was held that “*when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees,*” its activities shall not be considered as industry.

**17. *Bharat Bhawan Trust v. Bharat Bhawan Artists' Association: (2001) 7 SCC 630***

- Question was whether the Appellant which was an organisation for the promotion of art and culture was an industry.
- **Para 8:** It was held that Appellant is not an industry because it was involved in the promotion of art and artistic talent. There is no large-scale production. production of plays is not a systematic activity.

**18. *Union of India v. Shree Gajanan Maharaj Sansthan (2002) 5 SCC 44***

- The Court refused to issue a writ to the government for bringing into force the Amending Act.

**19. *State of UP v. Jai Bir Singh (2005) 5 SCC 1***

- **Para 17:** *Bangalore Water* was not a unanimous decision.
- **Para 21:** Amendment not brought into force even after 23 years.
- **Para 24:** *Bangalore Water* not a unanimous decision.
- **Para 31:** Compelling reasons for making a reference.
- **Para 32-33:** Krishna Iyer wrong in referring to the Act as a worker oriented statute.
- **Para 35:** Observations in Coir Board are not without foundation. Balance approach required.
- **Para 42:** hospitals, educations not industries as strikes etc not contemplated.

➤ **Para 45:** matter referred to larger bench.

**NOTE:** A 7 judges bench made a reference to 9 judges bench in (2017) 3 SCC  
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