

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 897 OF 2002

STATE OF U.P.

... APPELLANT

VS.

JAI BIR SINGH

... RESPONDENT

WITH

**C.A. No.4646/2007, C.A. No.3647/2007, SLP(C) No.1112/2009,
C.A. No.3920/2010, C.A. No.3119/2011, C.A. No.6114/2001,
C.A. No.6108/2002, C.A. No.1276/2001, C.A. No.1279/2001,
C.A. No.1278/2001, C.A. No.6471/2002, C.A. No.2506/2002,
C.A. No.8597/2001, C.A. No.4569/2002, C.A. No.5101/2002,
C.A. No.2409/2002, SLP(C) No.20982/2002,
C.A. Nos.355-358/2003, SLP(C) No.14085/2004,
SLP(C) No.11291/2004, SLP(C) No.14127/2004,
C.A. No.7994/2004, SLP(C) No.4139/2005, C.A. No.1274/2007,
C.A. No.1273/2007, C.A. Nos.1311-1312/2008,
SLP(C) No.16301/2007, SLP(C) No.3107/2008,
SLP(C) No.4327/2008, SLP(C) No.4329/2008,
SLP(C) No.4328/2008, C.A. No.296/2008,
SLP(C) No.16276/2008, SLP(C) No.17224/2008,
C.A. No.5519/2012, C.A. No.5681/2010,
SLP(C) CC No.7990/2009, C.A. No.7757/2011,
C.A. No.1131/2012, C.A. Nos.8149-8151/2012,
C.A. Nos.4505-4506/2013, C.A. Nos.4507-4508/2013,
SLP(C) Nos.12679-12682/2014, SLP(C) No.1857/2016,
AND SLP(C) No.14156/2021**

J U D G M E N T

DIPANKAR DATTA, J. (FOR HIMSELF AND UJJAL BHUYAN, J.)

This judgment is divided into the following sections:

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PRELUDE

1. A single definition in a pre-independence statute, since repealed after a little less than 8 (eight) decades of its existence, has troubled the Supreme Court of India without end. Prior to its repeal by the Industrial Relations Code, 2020¹, the Industrial Disputes Act, 1947² had defined “industry” in Section 2(j): a definition which has, perhaps, been the most litigated word in Indian labour jurisprudence, as would unfold hereafter.
2. Though the ID Act was enacted as a tool for securing industrial peace and harmony, what counts as an industry – private business, welfare work or government service – has been the focal point of discussion since long. Benches have differed time and again in deciding, what should the law cover – is it only business, or also schools, hospitals, and government services? Even today, this Court remains engaged with the same question it faced in 1952: “what is an industry?”, and a split verdict is on the anvil.
3. Such engagement began with ***D.N. Banerji v. P.R. Mukherjee***³ [5-J], where a municipality’s conservancy department was held to be an industry. Close on the heels followed ***Baroda Borough Municipality v. Workmen & Ors***⁴ [4-J], where it was held that municipal undertakings can constitute an “industry” if their activities are analogous to trade or business. In ***State of Bombay v. Hospital Mazdoor Sabha***⁵ [3-J],

¹ 2020 Code

² ID Act

³ AIR 1953 SC 58

⁴ AIR 1957 SC 110

⁵ (1960) 2 SCR 866

the Court held that a government-run hospital can constitute an “industry”. It emphasised that profit motive is irrelevant; what matters is systematic activity organised through employer–employee cooperation. A broad interpretation of “industry” was adopted, extending it to welfare and service-oriented institutions like hospitals. The decision in ***Corporation of the City of Nagpur v. Its Employees***⁶ [3-J], rendered a couple of months after ***Hospital Mazdoor Sabha*** (supra) by the same bench, held *inter alia* that the definition of the word “industry” is very comprehensive and if a department of a municipality discharges many functions, some pertaining to industry as defined in the ID Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the ID Act. In ***Madras Gymkhana Club Employees’ Union v. Gymkhana Club***⁷ [3-J], this Court referred to ***D.N. Banerji*** (supra), distinguished it and held that the Madras Gymkhana Club does not constitute an “industry” as it was not carrying on activities analogous to trade or business for the public. Later, ***Safdarjung Hospital v. Kuldip Singh Sethi***⁸ [6-J] excluded hospitals from “industry”. Then came ***Bangalore Water Supply and Sewerage Board v. A. Rajappa***⁹ [7-J], which rehabilitated ***Hospital Mazdoor Sabha*** (supra) while overruling ***Madras Gymkhana Club Employees’ Union*** (supra), ***Safdarjung***

⁶ (1960) 2 SCR 942

⁷ (1968) 1 SCR 742

⁸ (1970) 1 SCC 735

⁹ (1978) 2 SCC 213

Hospital (supra) and certain other decisions. It laid down the triple test and dominant-nature doctrine for identification of an industry. Interpretation of the word “industry” made in **Bangalore Water Supply** (supra), however, started gathering doubt towards the end of the last century and ultimately, **State of Uttar Pradesh v. Jai Bir Singh**¹⁰ [5-J] considered it appropriate to make a reference by a detailed judgment¹¹.

4. Curiously, despite the Parliament amending the definition of “industry” in Section 2(j) by the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982)¹², it was not enforced and, thus, remained a dead letter ever since.
5. Reading of each of the aforesaid precedents would reveal that this Court has swung between text and purpose, thereby veering between narrow and broad constructions, creating a body of law that is simultaneously landmark and labyrinthine. The phases of conflict can be captured by observing that while **D.N. Banerji** (supra) in 1952 advocated expansion, **Safdarjung Hospital** (supra) in 1970 imposed tests that were restrictive, **Bangalore Water Supply** (supra) in 1978 authoritatively felt inclined towards laying down the expansive triple test, thereby walking the path of re-expansion, **Jai Bir Singh [5-J]** (supra) preferred to make a reference in 2002 and now, in 2026, the

¹⁰ (2005) 5 SCC 1

¹¹ the referring judgment, wherever the context requires

¹² 1982 amendment

present 9-Judge Bench is constituted to reconsider all the precedents on the point and to settle the law, hopefully, once and for all.

CONSTITUTION BENCH – A QUESTION OF WHAT, NOT HOW MANY

6. ***Jai Bir Singh [5-J]*** (supra) opens by recording that the “... *appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon’ble Judges ...*”. It is this reference to itself as a Constitution Bench that triggers the need for a clarification, given the fact that this 9-Judge Bench too is referred to in the “NOTE” portion of the cause-lists published for 17th, 18th and 19th March, 2026 (i.e., the days when the reference was heard) as a Constitution Bench.
7. Article 145 of the Constitution provides for “Rule of Court, etc”. Clause (3) thereof stipulates the minimum number of judges who are to sit “*for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143*”. On its own terms, the minimum number shall be five. The proviso to clause (3) guides the course of action where the Court, consisting of less than 5 (five) Judges may, refer the question arising for opinion in an appeal under the Part, other than an appeal under Article 132, to a Court to be constituted in terms of clause (3) upon recording the requisite satisfaction. Thus, it seems to be plain that a reference to a Constitution Bench can originate from clause (3), the strength of which shall not be less than five, when such reference necessarily involves either a substantial question of law as to

the interpretation of the Constitution or for the purpose of hearing any reference under Article 143 (emphasis supplied). Also, in a case covered by the proviso to clause (3) of Article 145, a Bench of 5 (five) Judges may be required to be constituted. Thus, it is only when a Bench consisting of no less than 5 (five) Judges is constituted in the scenarios contemplated in clause (3) of Article 145 can such Bench be validly regarded as a Constitution Bench.

8. Not every Bench of 5 (five) or more judges, therefore, is a Constitution Bench. As is evident from the preceding discussion, Article 145(3) makes the test one of subject matter: a minimum of 5 (five) Judges must sit only when the case involves “a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143”. Cases covered by the proviso have an additional requirement. The determination of the substantial question of law as to the interpretation of this Constitution must be necessary for the disposal of the appeal. The strength alone does not satisfy the clause. Benches of 5 (five) or more could also be constituted for other reasons – to resolve conflicts of opinion between decisions of smaller Benches, to settle important questions of law (not necessarily requiring constitutional interpretation) or to reconsider the opinion of an earlier Bench of equal strength. This power flows from the Supreme Court’s inherent jurisdiction and is regulated by Rule 2¹³ of Order VI of the

¹³ Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.

Supreme Court Rules, 2013¹⁴. Whenever a Bench doubts an earlier decision and refers the question requiring an answer to the Hon'ble the Chief Justice of India¹⁵ for constitution of a "**larger Bench**" (emphasis supplied) and if, in fact, such larger Benches are constituted, such Benches though numerically large are not Constitution Benches within Article 145(3) unless a substantial question as to the interpretation of the Constitution arises for an answer. They are, properly, to be regarded as larger Benches. The difference is etymological: a Constitution Bench takes its name from the Constitution it interprets; a larger Bench takes its name from the size needed to settle precedent. To put it differently, a Constitution Bench speaks for the Constitution while a larger Bench speaks for certainty in the law. Thus, strength alone does not make a Bench a Constitution Bench.

9. It is important to remember that the power of this Court to interpret the Constitution is not dependent on the numerical strength of the Bench. As the guardian of the Constitution, even a Single Bench may interpret a constitutional provision where the issue arising so demands, yet, designating every bench of 5 (five) or more Judges as a Constitution Bench – irrespective of whether any constitutional question falls for determination – detracts from the term's constitutional purpose.
10. In the present reference, this Bench of 9 (nine) Judges is primarily tasked to decide a reference under Rule 2 of Order VI of the 2013 Rules

¹⁴ 2013 Rules

¹⁵ Chief Justice

and, therefore, in the detailed opinion that follows, we would consciously not refer to any Bench consisting of 5 (five) or more Judges (which had the occasion to deal with the issue of meaning of the word “industry”) as a Constitution Bench.

GENESIS OF THE REFERENCE

- 11.** This Bench of 9 (nine) Judges has been constituted by the Chief Justice pursuant to the order dated 2nd January, 2017 of a bench of 7 (seven) Judges in ***State of Uttar Pradesh v. Jai Bir Singh***¹⁶ [7-J]. ***Jai Bir Singh*** [7-J] (supra), considering the serious and wide ranging implications of the issue that fell for determination as also the fact that serious doubts had been expressed in ***Jai Bir Singh*** [5-J] (supra) about the correctness of the view taken in ***Bangalore Water Supply*** (supra), was of the view that the said decision requires reconsideration and, accordingly, ordered the matter to be placed before the Chief Justice for constitution of a 9-Judge Bench.
- 12.** The seed for the reference to the 5-Judge Bench, as aforesaid, was however sown by a Bench of 3 (three) Judges in its order dated 31st January, 2002 in ***State of Uttar Pradesh v. Jai Bir Singh***¹⁷ [3-J]. The said order reads as follows:

Leave granted.

One of the contentions which arises for consideration is whether the Social Forestry (“sic forestry”) Department, which is a Welfare Scheme of the Government, is an ‘Industry’ or not? Our attention has been drawn to the two decisions of this Court. The first decision is reported as Chief Conservator of Forests and Anr. vs. Jagannath Maruti Kondhare and Anr.

¹⁶ (2017) 3 SCC 311

¹⁷ C.A. No. 897 of 2002

(1996) 2 SCC 293 in which a three-Judge Bench of this Court held that the Forest department of the State was an 'Industry' even when it was undertaking a Welfare Scheme of Social Forestry ("sic forestry") Department. On the other hand, another Bench of this Court (though of two-Judges) in the case of State of Gujarat & Ors. vs. Pratamsingh Narsinh Parmar JT 2001 (3) SC 26 has taken a different view and has sought to distinguish the earlier decision in Chief Conservator of Forests case (supra). In our opinion, it is an important question of law as to whether the Welfare Scheme of the Government, like the Social Forestry ("sic forestry"), would be regarded as an 'Industry'. The matter is of considerable public importance, to be decided by a larger Bench. We, therefore, direct that the papers be laid before Hon'ble the Chief Justice for appropriate orders.

In the meanwhile, we direct that the respondent would be reinstated w.e.f. 1st February, 2002 but for the time being no back wages need to be paid. Back wages will be subject to the outcome of the appeal.

(underlining in original)

- 13.** Prior to constitution of this 9-Judge Bench, a 3-Judge Bench presided over by the Chief Justice of India considered the issue of case management required for final hearing of the appeals connected with ***Jai Bir Singh [3-J]*** (supra). We find that by an order dated 16th February, 2026, the 3-Judge Bench framed certain issues for consideration of the 9-Judge Bench, presumably because no question was framed in the referring judgment by the 5-Judge Bench. The issues framed by the order dated 16th February, 2026 are reproduced hereunder:

1. The instant appeals have been referred to a Nine-Judge Bench to consider the correctness of the judgment rendered by a Seven-Judge Bench in Bangalore Water Supply and Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 and concomitantly to also re-consider the interpretation of the expression "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947 (for short, 'the ID Act'). A Nine-Judge Bench, to be constituted by Hon'ble the Chief Justice of India separately, through an administrative order, in our considered opinion, will have to adjudicate the following broad issues:

(i) Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in Bangalore Water Supply and Sewerage Board's case (supra) to determine if an undertaking or enterprise falls within the definition of "industry" lays

down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression “industry” as contained in the principal Act?

(ii) Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be “industrial activities” for the purpose of Section 2(j) of the ID Act?

(iii) What State activities will be covered by the expression “sovereign function”, and whether such activities will fall outside the purview of Section 2(j) of the ID Act?

(iv) Any other issue(s) that may arise during the course of hearing before the Nine-Judge Bench.

BEYOND LABOUR LAW – A QUESTION OF CREDIBILITY

- 14.** The long pendency of the reference arising out of ***Bangalore Water Supply*** (supra) and the uncertainty that has followed does adversely reflect on institutional resolve. Parliament’s 1982 amendment to the ID Act sought to introduce a modified definition of “industry” in response to the Court’s broad interpretation. Sadly, it was never brought into force. For years together, the amendment remained dormant creating uncertainty instead of settling the law. The later references in 2005 and 2017, both seeking reconsideration, only extended this period of indecision. As a result, there has been no final ruling and the legal position has remained unclear. Even when born of judicial caution, delay of this order diminishes the Court’s institutional credibility.
- 15.** If a settled precedent is doubted, the Court must offer a clear and workable alternative. Doubt, without direction, only compounds uncertainty. The law ought not to oscillate indeterminately, for, when a question of this magnitude remains undecided for decades, it erodes

both the finality of judicial pronouncements and the stability an institution like this Court is meant to secure. Neither the mere passage of time nor the constitution of a 9-Judge Bench can, *ipso facto*, justify reopening settled law; yet, considerations of institutional credibility require this Bench to authoritatively settle, one way or the other, whether the interpretation of “industry” in ***Bangalore Water Supply*** (supra) should be left untouched or be diluted as ***Jai Bir Singh [5-J]*** advocates.

16. In fine, this Bench must do more than settle the meaning of “industry”: it must restore confidence that the Court speaks with clarity, authority, and finality.
17. Bearing in mind that institutional credibility is non-negotiable, the lingering uncertainty around ***Bangalore Water Supply*** (supra) must now be set to rest.

WHAT DID *BANGALORE WATER SUPPLY* (SUPRA) PRECISELY LAY DOWN?

18. It would be most appropriate at this stage, to remind ourselves of what ***Bangalore Water Supply*** (supra) laid down. The conclusions from the lead judgment are quoted first, followed by a resume of what the other Hon’ble Judges in their respective opinions had expressed.

OPINION OF HON’BLE KRISHNA IYER, J. (FOR HIMSELF, HON’BLE BHAGWATI AND HON’BLE DESAI, JJ.)

19. Hon’ble Krishna Iyer, J. in ***Bangalore Water Supply*** (supra) summed up the discussion in the manner following:

I

140. 'Industry', as defined in Section 2(j) and explained in *Banerji*, has a wide import.

"(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale *prasad* or food), prima facie, there is an 'industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

II

141. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be 'industry' provided *the nature of the activity*, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the *carrying on the trade or business*'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy."

III

142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

"(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality,

and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project.”

IV

143. *The dominant nature test:*

“(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in the *University of Delhi case*_(AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* will be the true test. The whole undertaking will be ‘industry’ although those who are not ‘workmen’ by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.”

(emphasis supplied)

CONCURRENCE OF HON’BLE BEG CJ.

- 20.** Hon’ble Beg, CJ. while concurring with Hon’ble Krishna Iyer, J. observed that where statutory language is imprecise or admits of ambiguity, the Court may legitimately discharge a quasi-legislative function; however, such an exercise, must remain within well-defined limits so as not to trench upon the exclusive domain of the legislature. His Lordship appeared to favour a constructive and creative approach to interpretation, not dissimilar to that adopted by Lord Denning, albeit tempered by judicial restraint.

a) Hon’ble Beg, CJ. further opined that the judgment of Hon’ble Krishna Iyer, J. did not discard the earlier judicial tests for determining

“industry”, but rather reaffirmed those principles as enunciated in precedents such as ***D. N. Banerji*** (supra), ***Corporation of the City of Nagpur*** (supra), and ***Hospital Mazdoor Sabha*** (supra).

- b) On the approach to statutory interpretation, Hon’ble Beg, CJ. underscored that where the literal meaning proves inadequate, the interpretative process must necessarily travel beyond the text, with the statute being read as a whole rather than in isolated fragments.
- c) The inherently dynamic character of the term “industry”, it was ruled, by Hon’ble Beg, CJ. is a concept that evolves in tandem with societal developments. Thus, modern welfare legislation such as the ID Act warrants a progressive, and not a narrow or pedantic, construction.
- d) Hon’ble Beg, CJ. remarked upon the lack of precision and circular nature of the definition of “industry”, particularly in view of the interdependence between “industry” and “workman” under Section 2(s). The definition was intended to serve as a guiding framework rather than an exhaustive delineation and did not predicate the existence of “industry” upon a profit motive.
- e) Traditional canons of construction such as *ejusdem generis* and *noscitur a sociis* would not, according to Hon’ble Beg, CJ., furnish a complete or satisfactory solution. Expressions such as “manufacture” were indicative of processes in which employers are engaged, the concept of an “employer” necessarily presupposing employee.
- f) Hon’ble Beg, CJ. cautioned against employing the phrase “analogous to industry” as a restrictive device and indicated that earlier narrow

interpretations warranted reconsideration. Finally, His Lordship held that services governed by distinct constitutional or statutory regimes, particularly those under Articles 310 and 311 of the Constitution, ought to be excluded from the purview of “industry” by necessary implication. In conclusion, it was observed that the meaning of “industry” must be ascertained contextually, having due regard to the scheme and object of the ID Act, and confined to the purposes for which the legislation was enacted.

OPINION OF HON’BLE SINGH, J. (FOR HIMSELF AND HON’BLE TULZAPURKAR, J.)

- 21.** Taking a nuanced stand, Hon’ble Singh, J. observed that the definition of “industry” ought to be confined to those activities which are systematically or habitually undertaken on commercial lines by private entrepreneurs, in cooperation with employees, for the production or distribution of goods or for rendering material services to the community or a section thereof.
- a) Hon’ble Singh, J. took the view that such a definition would necessarily exclude charitable institutions, hospitals run on a charitable basis or as part of governmental or municipal functions, educational and research institutions, and liberal professions such as those of doctors, lawyers, and teachers. It was reasoned that in the case of such professions, the contribution of employees to the ultimate service rendered is minimal and cannot be said to constitute the product of meaningful cooperation between employer and employee.

b) In support of this restrictive construction, reliance was placed upon the judgment of Hon'ble Gajendragadkar, J. in ***Hospital Mazdoor Sabha*** (supra), wherein it was emphasised that a line must be drawn in a fair and reasonable manner within the wide statutory definition under Section 2(j), so as to exclude certain categories of services. Particular reference was made to services rendered in a purely personal, domestic, or casual capacity which, it was held, ought not to be brought within the sweep of the definition. Accordingly, it was cautioned that the words employed in Section 2(j) ought not to be accorded their widest possible meaning.

CONCURRENCE OF HON'BLE CHANDRACHUD, J.

22. In His Lordship's concurring opinion with Hon'ble Krishna Iyer, J. and Hon'ble Beg, C.J., Hon'ble Chandrachud, J. observed that His Lordship was unable to concur with the dissenting opinion of Hon'ble Singh and Hon'ble Tulzapurkar, JJ. While expressing partial disagreement with the decision in ***Hospital Mazdoor Sabha*** (supra), His Lordship acknowledged that the conclusion therein - that the J.J. Group of Hospitals managed by the State Government constituted an "industry" - was correctly arrived at. However, His Lordship did not approve of the judicially crafted exceptions engrafted upon the statutory definition in that decision.

a) Hon'ble Chandrachud, J. reiterated that the interpretative principle of *noscitur a sociis* stood expressly rejected by Hon'ble Gajendragadkar, J. in ***Hospital Mazdoor Sabha*** (supra). In that context, the

interrelated statutory definitions of “industrial dispute” under Section 2(k), “wages” under Section 2(rr), “workman” under Section 2(s), and “employer” under Section 2(g), along with “public utility service” under Section 2(n), were required to be read conjointly and affirmed that it is the intrinsic character of the activity that determines whether it falls within Section 2(j), and not the existence of profit motive, capital investment, or a *quid pro quo* element, all of which were held to be irrelevant considerations.

- b) At the same time, Hon’ble Chandrachud, J. noted that the Court, in ***Hospital Mazdoor Sabha*** (supra), had proceeded to carve out exclusions from the otherwise wide amplitude of Section 2(j) by delineating certain callings, services, or undertakings as falling outside its scope. Such an exercise, it was observed, was overly policy-oriented and more appropriately within the legislative domain. In particular, the exclusion of sovereign functions of the State was regarded as judicially unwarranted.
- c) Hon’ble Chandrachud, J. proceeded to articulate that any activity which is systematically or habitually undertaken on commercial lines by private entrepreneurs, with the cooperation of employees, for the production or distribution of goods or for rendering material services to the community or a segment thereof, would fall within the ambit of an “undertaking” under Section 2(j).
- d) According to Hon’ble Chandrachud, J., sovereign functions are not automatically excluded from Section 2(j); the decisive test is the

nature of the activity, not the identity of the actor. Even inherently State activities like currency manufacture could qualify as an “industry” if hypothetically performed by private persons, as supported by the First Schedule and Section 2(n)(vi).

- e) Consistent with this approach, Hon’ble Chandrachud, J. reiterated that the presence or absence of profit motive is immaterial in determining whether a given activity constitutes an “industry”.
- f) On the inclusion of professions, Hon’ble Chandrachud, J. held that liberal professions such as those of lawyers and doctors would also fall within the ambit of “industry”. The test that the production of goods or material services must be the direct and proximate result of cooperation between employer and employee was characterised as inherently subjective and likely to engender uncertainty in the application of the law.
- g) Hon’ble Chandrachud, J. also expressed agreement with the inclusion of clubs within the fold of “industry”, broadly in line with the reasoning adopted by Hon’ble Krishna Iyer, J.

ARGUMENTS BY ATTORNEY GENERAL

- 23.** Mr. Venkataramani, learned Attorney General for India, appearing for the Union of India, took us extensively through **Jai Bir Singh [5-J]** (supra) and sought to highlight the reasons for the reference. He submitted that the core principles laid down in **Bangalore Water Supply** (supra), viz. the triple test of systematic organised activity, employer-employee cooperation, and production or distribution of goods

and material services geared to satisfy human wants, represent a correct exposition of law under Section 2(j) of the ID Act and call for no reconsideration. He, however, urged that the application of the test requires caution. Charitable institutions, sovereign functions and State welfare schemes cannot be mechanically brought within the definition merely because they involve organised labour; such an approach would ignore the constitutional character of a modern welfare State. Further, he submitted that the un-notified 1982 Amendment (by which the Parliament indicated its disagreement with the expansive approach to define the term industry as proposed in ***Bangalore Water Supply*** (supra) and sought to narrow down the scope of the definition by excluding several welfare and non-commercial institutions) and the 2020 Code [which retains the triple test in principle, however excludes charitable/philanthropic institutions, sovereign government functions (including defence, atomic energy, space), domestic services and other activities notified by the Central Government] reflects the parliamentary intent to exclude non-commercial and welfare activities from the ambit of “industry”. Even though the 1982 Amendment was not notified, it and the 2020 Code can still serve as an interpretative aid to understand legislative intent – which is a more restrictive reading of “industry”. Next, it was submitted that social welfare activities and schemes undertaken by Government departments or their instrumentalities should not be construed as industrial activities. Lastly, as regards “sovereign function”, after referring to various precedents, it was

submitted that this Court has consistently refused to give an exhaustive definition of the word. Building on this argument, it was submitted that the same must remain flexible and not attempted to be exhaustively defined. At the same time, certain functions remain inherently and inalienably sovereign, forming the core attributes of Statehood, such as defence of the nation, maintenance of public order, administration of justice, legislative and policy-making functions, and matters relating to citizenship, passports, and other coercive or regulatory powers. Beyond this limited core, however, the classification of governmental activities must be contextual and capable of severability, bearing in mind the expanding role of the State in a welfare framework. The executive is best placed to identify such functions, subject to limited judicial review to prevent arbitrariness. In fine, while the triple test remains sound, its application must be tempered by legislative intent and constitutional context so that welfare and sovereign functions remain outside the purview of industrial adjudication under the Act.

PRELIMINARY OBJECTION TO THE REFERRING JUDGMENT, WHETHER VALID?

24. Ms. Indira Jaisingh, learned senior counsel, opposing the reference contended, at the outset, that there was no conflict of views between the opinions expressed in ***Chief Conservator of Forests v. Jagannath Maruti Kondhare***¹⁸ and ***State of Gujarat v. Pratamsingh Narsinh Parmar***¹⁹. Though ***Jai Bir Singh [3-J]*** (supra) recorded that the latter

¹⁸ (1996) 2 SCC 293

¹⁹ (2001) 9 SCC 713

decision took a view different from the one in the former and distinguished it, the ground for such distinction, i.e., deficiency in pleadings, was not taken note of and, as such, no doubt was cast on the proposition laid down by the former decision. In any event, whether or not the Social Forestry Division could be regarded as an “industry” was the limited question that was referred by **Jai Bir Singh [3-J]** (supra) and not that **Bangalore Water Supply** (supra) requires reconsideration. According to her, **Jai Bir Singh [5-J]** (supra) while making a further reference to a 7-Judge Bench trenching beyond its jurisdiction and this Court ought to return the reference as incompetent.

25. This particular contention necessitates recording of a full and complete satisfaction that a conflict of opinion did exist, which required resolution by a larger Bench. Notwithstanding that a 9-Judge Bench is presently seized of the matter to reconsider the opinion expressed in **Bangalore Water Supply** (supra), we have to enter a caveat. In our considered opinion, any reference made by a Bench of lesser strength to a larger Bench in course of hearing a legal issue is in furtherance of and/or to facilitate the core judicial function of the apex court of the country to expound the law authoritatively for the same to be binding on all in terms of Article 141 of the Constitution. Indubitably, a reference to a larger Bench requires careful deliberation, not a casual or routine exercise. If the Bench referring an issue for reconsideration by a larger Bench, in its order of reference, fails to consider all relevant aspects and, consequently, the larger Bench hearing the reference finds the same to

be flawed and, thus, incompetent, it is well within the authority and competence of the larger Bench, upon hearing the parties, to return the reference without answering it. Merely because the reference has spiralled up to a larger Bench of 9 (nine) Judges over the years ought not to be considered an overriding factor, particularly when **Bangalore Water Supply** (supra) has held the field for a little less than half a century and a new legislation is in place today defining “industry” for the purpose of the 2020 Code, with effect from 7th February, 2026.

26. We find substance in the contention of Ms. Jaisingh that there was, indeed, no conflict between **Jagannath Maruti Kondhare** (supra) and **Pratamsingh Narsinh Parmar** (supra). This, we say, for the reason that the latter decision of a bench strength of 2 (two) Judges while neither doubting nor disputing the principle of law enunciated in the former decision of 3 (three) Judges held, on facts, that the principle so enunciated does not apply in the facts owing to omission on the part of the respondent in the civil appeal to assert relevant facts in his writ petition before the high court. We can do no better than reproduce the relevant paragraphs from **Pratamsingh Narsinh Parmar** (supra) hereunder:

5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organisation where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been

contended that the order of dismissal is vitiated for non-compliance with Section 25-F of the Act. The State in its counter-affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in *Jagannath Maruti Kondhare* to hold that the Forest Department could be held to be "an industry".

6. The learned Single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in *Jagannath Maruti Kondhare* case inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, we have no hesitation to come to the conclusion that the learned Single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned Single Judge and hold that the writ petition would stand dismissed.

(emphasis supplied)

- 27.** A reading of the above passages would leave none in doubt that the principle of law laid down in ***Jagannath Maruti Kondhare*** (supra) was not applied in ***Pratamsingh Narsinh Parmar*** (supra) because of deficient pleadings. The 2-Judge Bench in ***Pratamsingh Narsinh Parmar*** (supra) was perfectly justified in its approach having regard to the settled law that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. ***Jai Bir Singh [3-J]*** (supra) though did not advert to any existing conflict of opinion, required the larger Bench's consideration limited to the point indicated in such

order, i.e., whether the Welfare Scheme of the Government, like the Social Forestry, would be regarded as an industry.

28. Nonetheless, once the matter moved to the larger Bench in **Jai Bir Singh [5-J]** (supra), it did not restrict its scrutiny to the point referred but broadened the scope of discussion not strictly in line with what was referred. The opening paragraphs of the referring judgment read as follows:

1. This present appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon'ble Judges of this Court finding an apparent conflict between the decisions of two Benches of this Court in the cases of *Chief Conservator of Forests v. Jagannath Maruti Kondhare* of three Judges and *State of Gujarat v. Pratamsingh Narsinh Parmar* of two Judges.

2. On the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out differently the ratio of the seven-Judge Bench decision of this Court in the case of *Bangalore Water Supply & Sewerage Board v. A. Rajappa* (shortly hereinafter referred to as *Bangalore Water case*). The Bench of three Judges in the case of *Chief Conservator of Forests v. Jagannath Maruti Kondhare* based on the decision of *Bangalore Water case* came to the conclusion that "Social Forestry Department" is covered by the definition of "industry" whereas the two-Judge Bench decision in *State of Gujarat v. Pratamsingh Narsinh Parmar* took a different view.

3. As the cleavage of opinion between the two Benches of this Court seems to have been on the basis of the seven-Judge Bench decision of this Court in the case of *Bangalore Water*, the present case along with the other connected cases, in which correctness of the decision in the case of *Bangalore Water* is doubted, has been placed before this Bench.

(emphasis supplied)

29. We may, at once, notice that from the very inception, **Jai Bir Singh [5-J]** (supra) proceeded on the premise as if there was a cleavage of opinion between **Jagannath Maruti Kondhare** (supra) and **Pratamsingh Narsinh Parmar** (supra) which, for reasons assigned in the aforesaid paragraphs, is incorrect.

30. The preliminary objection of Ms. Jaisingh, therefore, appears to be of substance and valid.

REFERRING JUDGMENT – OTHER REASONS FOR THE REFERENCE

31. **Jai Bir Singh [5-J]** (supra), thereafter, proceeded to assign multiple reasons why **Bangalore Water Supply** (supra) merits reconsideration. Rather than extensively quoting from the opinion expressed in the referring judgment, we consider it appropriate to encapsulate the same hereunder:

- (i) The decision in **Bangalore Water Supply** (supra) is not based on the unanimous opinion of the Judges comprising the Bench. The majority comprised of 5 (five) Judges. While 3 (three) Judges had agreed to a common opinion, 2 (two) of the Judges comprising the majority had given separate opinions projecting a view partly different from the views expressed in the common opinion. Hon'ble Beg, CJ., who was presiding over the Bench having retired, had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. The author of the lead opinion (Hon'ble Krishna Iyer, J.) and the two Judges (Hon'ble Bhagwati and Hon'ble Desai, JJ.) who spoke through him did not have the benefit of the dissenting opinion of the other two Judges (Hon'ble Singh and Hon'ble Tulzapurkar, JJ.) and the separate partly dissenting opinion of another Judge (Hon'ble Chandrachud, J.), as those opinions were prepared and delivered subsequent to the delivery of the judgment in **Bangalore Water Supply** (supra). In such a situation, the

referring judgment opined that it is difficult to ascertain whether the opinion of Hon'ble Krishna Iyer, J. given on his own behalf and on behalf of Hon'ble Bhagwati and Hon'ble Desai, JJ., can be held to be an authoritative precedent which would require no reconsideration even though the Judges themselves expressed the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in.

- (ii) The worker-oriented approach in construing the definition of "industry" by the Bench in ***Bangalore Water Supply*** (supra), unmindful of the interest of the employer or the owner of the industry and the public, who are the ultimate beneficiaries, is a one-sided approach and not in accordance with the ID Act.
- (iii) The notion of sovereign functions ought to expand to encompass public welfare initiatives undertaken by the Government in fulfilment of its constitutional responsibilities, thereby excluding them from the ambit of "industry". Despite the 1982 Amendment having amended the definition of "industry", the amended definition remains unenforced, perpetuating uncertainty. The judicial interpretation of the term "industry" in ***Bangalore Water Supply*** (supra) appears to be a hindrance to implement the amended definition. Bearing in mind the object of the ID Act, interpretation of the word "industry" must be a balanced one having regard to the interest of the workers, the employers as well as the public.

- (iv) The view expressed by a 6-Judge Bench in **Safdarjung Hospital** (supra) [which was overruled in **Bangalore Water Supply** (supra)] was unanimous. It was held in **Safdarjung Hospital** (supra) that although profit motive is irrelevant, in order to encompass the activity within "industry" the "activity must be analogous to trade or business in a commercial sense" and mere enumeration of "public utility service" in Section 2(n) of the ID Act read with the First Schedule thereof should not be held decisive. This interpretation was affirmed, suggesting that **Bangalore Water Supply** (supra), not being a unanimous decision, was not quite right in overruling **Safdarjung Hospital** (supra).
- (v) In **Coir Board, Ernakulam v. Indira Devi P.S.**²⁰ [2-J], an order for reference to a larger bench of more than 7 (seven) Judges was made to reconsider **Bangalore Water Supply** (supra). A Bench presided over by the Chief Justice, however, expressed in **Coir Board Ernakulam State Kerala v. Indira Devai P.S.**²¹ [3-J] that, in its opinion, **Bangalore Water Supply** (supra) does not require any reconsideration on a reference being made by a 2-Judge Bench, which is bound by the larger Bench judgment. Thus, the reference sought by the bench of two Judges to a larger Bench of more than 7 (seven) Judges was declined in **Coir Board Ernakulam** [3-J] (supra). The workers argued before **Jai Bir Singh** [5-J] (supra) that

²⁰ (1998) 3 SCC 259

²¹ (2000) 1 SCC 224

the observations in paragraph 19 of **Coir Board Ernakulam [2-J]** (supra) were unsupported by any material on record. However, **Jai Bir Singh [5-J]** (supra) rejected this criticism and held that the observations in **Coir Board Ernakulam [2-J]** (supra) did have a valid basis. Further, it was held that the experience of Judges in the apex court is not derived from the case in which the observations were made; the experience was from the cases regularly coming before it through the Labour Courts. According to **Jai Bir Singh [5-J]** (supra), past experience indicated the majority view in **Bangalore Water Supply** (supra) having led to numerous awards passed by industrial tribunals/labour courts favouring reinstatement of workmen and significant amounts on account of back wages, ultimately forcing employers with limited resources to shut down, adversely affecting employers, workers and the public.

- (vi) Though the legislature, subsequent to **Bangalore Water Supply** (supra), amended the definition of the word "industry", due to the lack of will both on the part of the legislature and the executive, the amended definition, for a long period of 23 (twenty-three) years, has remained dormant. It was pointed out to the Bench, as recorded in paragraph 8 of the referring judgment, that "*... earlier an attempt was made to seek enforcement of the amended Act through this Court*" and reference was made to **Aeltemesh Rein v. Union of India**²². The referring judgment records, the Union came forward with an

²² (1988) 4 SCC 54

explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes has been provided by law and, therefore, the amended definition was not brought into force. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act, were seen as compelling reasons in **Jai Bir Singh [5-J]** (supra) to make the reference (see: paragraph 45).

WHEN CAN A REFERENCE BE MADE TO A LARGER BENCH – JUDICIAL GUIDANCE

32. It is considered apposite to first refer to **Keshav Mills Co. Ltd. v. CIT**²³ [7-J], a precedent which was available for **Jai Bir Singh [5-J]** (supra) to follow. Certain principles were enunciated in **Keshav Mills Co. Ltd.** (supra) with regard to what constitutes grounds for a valid reference or review of prior decisions of the Supreme Court. Arising out of a tax matter, this Court rejected the revenue's contention that its earlier decisions in **New Jehangir Vakil Mills v. CIT**²⁴ [2-J] and **Petlad Turkey Red Dye Co. Ltd, Petlad v. CIT**²⁵ [5-J] required reconsideration. In so rejecting, Hon'ble Gajendragadkar, C.J. speaking for the 7-Judge Bench held that:

23. In dealing with the question as to whether the earlier decisions of this Court in *New Jehangir Mills case* [AIR 1959 SC 1177], and *Petlad Co. Ltd. case* [AIR 1963 SC 1484] should be reconsidered and revised by us, we

²³ AIR 1965 SC 1636

²⁴ AIR 1959 SC 1177

²⁵ AIR 1963 SC 1484

ought to be clear as to the approach which should be adopted in such cases. Mr Palkhivala has not disputed the fact that in a proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate. When this Court hears appeals against decisions of the High Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting its own view in preference to that of the High Court, this Court would be discharging its duty as a court of appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, Section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:—What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to

any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.

25. The principle of stare decisis, no doubt, cannot be pressed into service in cases where the jurisdiction of this Court to reconsider and revise its earlier decisions is invoked; but nevertheless, the normal principle that judgments pronounced by this Court would be final, cannot be ignored, and unless considerations of a substantial and compelling character make it necessary to do so, this Court should and would be reluctant to review and revise its earlier decisions.

(emphasis supplied)

- 33.** The *ratio decidendi*, when culled out, is that for revising or reviewing its earlier decisions multifarious considerations must arise which *inter alia* include i) whether it is in the interests of public good; ii) the nature of the infirmity or error on which a plea for a review or revision of the earlier view is based; iii) whether the earlier decision has been followed on subsequent occasions by the Supreme Court or the High Courts; iv) whether on the earlier occasion some patent aspects of the question before the Court remained unnoticed; and v) would the reversal of earlier decision result in public inconvenience, hardship or mischief. Furthermore, the Court held that it is imperative on it to maintain a certain degree of certainty, consistency and continuity in the interpretation of law in the country. Therefore, before a previous decision is pronounced to be erroneous, the Court must be satisfied that

a revision of such a decision is justified and there are valid and compelling reasons for the same.

- 34.** Not too long ago, in ***Dr Shah Faesal v. Union of India***²⁶ [5-J], a specific issue was framed:

"16.1.(i) When can a matter be referred to a larger Bench?"

In answer thereto, this Court speaking through Hon'ble N.V. Ramana, CJ. observed:

17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, *"It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness"*. [Congressional Record—Senate, Vol. 156, Pt. 7, 10018 (7-6-2010).]

18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.

19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench. ...

(emphasis supplied)

²⁶ (2020) 4 SCC 1

35. This Court cautioned that a reference "*should not be made in a casual or cavalier manner*" and, *inter alia*, should be made only when it is shown that the proposition laid down in a case has become unworkable or is contrary to a well-established principle.
36. A few months before the decision in ***Shah Faesal*** (supra), this Court in ***Srimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly***²⁷ [3-J] had reiterated the same law. It was held:

157. There is no doubt that the requirements under Article 145(3) of the Constitution have never been dealt with extensively and, more often than not, have received mere lip service, wherein this Court has found existence of case laws which have already dealt with the proposition involved, and have rejected such references. Normatively, this trend requires consideration in appropriate cases, to ensure that unmeritorious references do not unnecessarily consume precious judicial time in the Supreme Court.

158. In any case, we feel that there is a requirement to provide a preliminary analysis with respect to the interpretation of this provision. In this context, we need to keep in mind two important phrases occurring in Article 145(3) of the Constitution, which are, "substantial question of law" and "interpretation of the Constitution". By reading the aforesaid provision, two conditions can be culled out before a reference is made:

(i) The Court is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution;

(ii) The determination of which is necessary for the disposal of the case.

159. We may state that we are not persuaded for referring the present case to a larger Bench as the mandate of the aforesaid Article is that this Court needs to be satisfied as to the existence of a substantial question of law on the constitutional interpretation. However, this does not mean that every case of constitutional interpretation should be compulsorily referred to a Constitutional Bench.

160. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger Bench. The cardinal need is to achieve a judicial

²⁷ (2020) 2 SCC 595

balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis.

(emphasis supplied)

- 37.** In short, the Court emphasized that references to a larger Bench (for matters involving substantial question of law as to interpretation of Constitution) should be made only in exceptional circumstances and not as a matter of routine. It cautioned that unmeritorious references unnecessarily consume judicial time. Moreover, a question that has already been settled by an authoritative decision cannot be regarded as a substantial question of law.

EXAMINING *JAI BIR SINGH [5-J]* – A FALTERING REFERENCE

- 38.** We have the highest of regard for the Hon'ble Judges who comprised the Bench in ***Jai Bir Singh [5-J]*** (supra). Nonetheless, upon threadbare examination of the referring judgment, we cannot but regret our inability to concur therewith. None of the reasons noted above appear to us at all convincing and/or compelling requiring a reference to be made. For reasons more than one, the referring judgment is not free from fundamental flaws. Painfully, we venture to say why each of the reasons assigned by the 5-Judge Bench, noted by us in the six sub-paragraphs of paragraph 31, are not justified and/or acceptable. Our answers are given hereunder, *seriatim*.

(i) Decision in *Bangalore Water Supply (supra)*, not unanimous?

- a) It seems that ***Jai Bir Singh [5-J]*** (supra) missed the woods for the tree. A major portion of the referring judgment (paragraphs 11 to 21) is devoted to the thought process germinating in the mistaken

conclusion that ***Bangalore Water Supply*** (supra) was not a unanimous decision. The judgment in ***Bangalore Water Supply*** (supra) was pronounced on 21st February, 1978, a day prior to Hon'ble Beg, CJ. demitting office. Hon'ble Krishna Iyer, J. pronounced the lead judgment speaking for himself, as well as Hon'ble Bhagwati and Hon'ble Desai, JJ. Hon'ble Beg, CJ. also pronounced his supplementing/concurring judgment. From the opening paragraph of the judgment of Hon'ble Chandrachud, J. pronounced on 7th April, 1978 [paragraph 171 of the SCC report], it is found that His Lordship on 21st February, 1978 had dictated a short order on behalf of himself and his brethren, Hon'ble Singh and Hon'ble Tulzapurkar, JJ. [referred to in paragraph 170 of the SCC report] expressing agreement with the views of Hon'ble Krishna Iyer, J. and Hon'ble Beg, CJ. that the appeal of Bangalore Water Supply and Sewerage Board be dismissed. It was also recorded that the area of concurrence or divergence with the rest of the judgment, if necessary, would be indicated later. It was only on 7th April, 1978, much after Hon'ble Beg, CJ. had demitted office, that the judgments penned by Hon'ble Chandrachud, J. for himself and Hon'ble Singh, J. (for himself and Hon'ble Tulzapurkar, J.) were placed in the public domain. The opinion of Hon'ble Singh, J. was circulated first among the Hon'ble Judges, as it appears from the opinion of Hon'ble Chandrachud, J. His Lordship noticed "*divergent views expressed by Jaswant Singh and Tulzapurkar, JJ. on certain aspects of the matter*"

and having "*given a further thought to the frustrating question as to what falls within and without*" the statutory concept of "industry", was "*unable to accept the basis on which Jaswant Singh and Tulzapurkar, JJ. have expressed their dissent*". Significantly, neither did Hon'ble Chandrachud, J. nor Hon'ble Singh, J. disagree with either Hon'ble Krishna Iyer, J. or Hon'ble Beg, CJ. insofar as the outcome (read: dismissal) of the appeal before the 7-Judge Bench.

- b) Each Hon'ble Judge being a member of a Bench of the apex court has the freedom to express his own view regarding a specific question. It is well-nigh conceivable that multiple Judges on the Bench may arrive at a conclusion, which is congruent, but the line of thinking, the analytical pathways and the underlying reasoning employed to attain it exhibit some degree of variability. Therefore, in essence, disparate approaches could yield a singular, concordant result. Different shades of interpretation of the definition of "industry" by the Hon'ble Judges and the reasoning given in each of the individual opinions for reaching the same conclusion of the appeal deserving dismissal notwithstanding, to emphatically state that the 7-Judge Bench was divided in its opinion [with Hon'ble Krishna Iyer, J. speaking for the majority and Hon'ble Singh, J. speaking for the minority] or that Hon'ble Chandrachud, J., on the one hand, partly dissented with the majority and, on the other, that Hon'ble Singh and Hon'ble Tulzapurkar, JJ. dissented with the majority is, in our appreciation and analysis of what is evident,

narration of a version of events that seem to diverge from factual accuracy. The starting point of discussion in ***Jai Bir Singh [5-J]*** (supra) [after the first three paragraphs which missed noting that there was no cleavage of opinion (as demonstrated above)] took off at a tangent, ignoring what was so very vital and important: the opening words of Hon'ble Chandrachud, J.'s opinion. In fact, it is conspicuous by its absence in the referring judgment. Thus, the very foundation of the referring judgment is tenuous and, unwittingly, has yielded an undesirable outcome of ***Bangalore Water Supply*** (supra) being doubted based on an untenable reason (emphasis supplied).

- c) Discussion in the referring judgment to drive home the point that the judgment of Hon'ble Krishna Iyer, J. and the concurring opinion of Hon'ble Beg, CJ. were rendered without looking into the opinions of Hon'ble Chandrachud, J. and Hon'ble Singh, J. is, in our opinion, wholly irrelevant and serves no purpose at all for doubting the efficacy of ***Bangalore Water Supply*** (supra) as a binding precedent. It does not appear from the opinions of Hon'ble Chandrachud, J. and Hon'ble Singh, J., rendered subsequently, that Their Lordships had no occasion to peruse the judgment of Hon'ble Krishna Iyer, J. and the concurring opinion of Hon'ble Beg, CJ. before the same were pronounced. Their Lordships might have had genuine reasons impeding rendering of the respective opinions by 21st February, 1978; but any delayed rendering of opinions by Their

Lordships could not have formed the basis of a reference on the specious ground that neither Hon'ble Krishna Iyer, J. nor Hon'ble Beg, CJ. had the occasion to peruse such subsequent opinions.

- d) Quite apart, labelling the judgment of Hon'ble Krishna Iyer, J. in ***Bangalore Water Supply*** (supra) as not unanimous and critically viewing it in light of the reasons assigned by Hon'ble Singh, J. for himself and Hon'ble Tulzapurkar, J. for expressing disagreement, and not doubt, with the purpose of making a reference for a reconsideration of the meaning of "industry" as propounded in ***Bangalore Water Supply*** (supra) proceeds on a patent ignorance of the dictum in ***Union of India v. Raghubir Singh***²⁸ read with Article 145(5) of the Constitution.
- e) Law seems to be well settled that it is the numerical strength of the Bench that matters and not whether an Hon'ble Judge or a couple of Hon'ble Judges on the Bench has/have differed forming the minority. ***Bangalore Water Supply*** (supra) has to be seen as the judgment of a 7-Judge Bench and not as a split verdict (emphasis supplied). This, possibly escaped the attention of the 5-Judge Bench.
- f) To find a precedent, one need not travel too far back. ***Aligarh Muslim University v. Naresh Agarwal***²⁹ is a decision of fairly recent origin where a 7-Judge Bench overruled ***S. Azeez Basha v. Union of India***³⁰, a unanimous decision rendered by a 5-Judge

²⁸ (1989) 2 SCC 754

²⁹ (2025) 6 SCC 1

³⁰ AIR 1968 SC 662

Bench. Incidentally, ***Aligarh Muslim University*** (supra) was decided by a majority of 4:3 and, thus, factually 4 (four) Hon'ble Judges overruled a unanimous 5-Judge Bench decision; yet, in law, the effect is that ***Aligarh Muslim University*** (supra) has to be seen as overruling the unanimous 5-Judge Bench decision in ***S. Azeez Basha*** (supra) because of the strength of the Bench (seven).

g) *Per* the law as it stands now, the numerical strength of the Bench irrespective of the differences in reasoning adopted by the Hon'ble Judges comprising such bench would be determinative of the binding nature of a judgment and not the number of Judges comprising the majority.

(ii) Worker-oriented approach?

a) A judgment should not and cannot be characterised as “worker-oriented”, merely because its ultimate outcome happens to favour the working class. It is axiomatic that judicial determinations are founded on reasons; it is those reasons that sustain the conclusion. Where the reasons are sound, the ultimate conclusion has to be respected and not viewed with reproach simply because it follows a particular path. The proper course, if at all the judgment is to be doubted, is to test the reasoning on which the conclusion rests and then to explain why it calls for reconsideration. To question a judgment solely on the ground that its outcome is labour-centric is, in our considered view, not only untenable but an egregious breach of Article 141 discipline. Be that as it may!

- b) The criticism of the opinion penned by Hon'ble Krishna Iyer, J. in **Jai Bir Singh [5-J]** (supra) as evincing a one-sided approach in favour of the workers, with respect, fails to comprehend that the ID Act is a social welfare legislation. Construing such a legislation in favour of labour is a settled canon. To fault **Bangalore Water Supply** (supra) for taking such a view is to fault the statute itself, which amounts to a glaring error of interpretive method.
- c) The referring judgment also does not take into account precedents of this Court acknowledging that the ID Act is a social welfare legislation, which has been enacted in the interest of workmen.
- d) **Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.**³¹ is a reminder of the settled law that in construing the provisions of a welfare legislation like the ID Act, the Courts should adopt what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the enactment and is more beneficial to the employees, has to be preferred. It was also emphasized that the ID Act, which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose.

³¹ (1973) 1 SCC 813

- e) In ***Workmen of Indian Standards Institution v. Management of Indian Standards Institution***³² [3-J], speaking for the majority, Hon'ble Bhagwati, J. after considering ***Safdarjung Hospital*** (supra) highlighted that the ID Act is a legislation intended to bring about peace and harmony between management and labour in an "industry" so that production does not suffer and at the same time, labour is not exploited and discontented; therefore, the tests must be so applied as to give the widest possible connotation to the term "industry". It was also observed that whenever a question arises whether a particular concern is an "industry", the approach must be broad and liberal and not rigid or doctrinaire; such an interpretation ought to be made which would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective.
- f) A few months before the referring judgment was delivered, this Court in ***Steel Authority of India Ltd. v National Union Waterfront Workers***³³ [5-J], though dealing with a different labour legislation, propounded that after the advent of the Constitution of India, the State is under an obligation to improve the lot of the workforce. Referring to Article 23 (prohibiting, inter alia, *begar* and other similar forms of forced labour), Article 38

³² (1975) 2 SCC 847

³³ (2001) 7 SCC 1

(mandating the State to secure a social order for promotion of welfare of the people and to establish an egalitarian society), Article 39 (enumerating the principles of policy of the State which include welfare measures for the workers), Article 43 (requiring the State to endeavour to secure, by a suitable legislation or economic organisation or in any other way for all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities), Article 43-A (enjoining the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment, or other organisations engaged in any industry) and Articles 14 and 16 enshrining the guarantee of equality before law and equality of opportunity in public employment, with the Preamble to the Constitution as the lodestar guiding those who find themselves in a grey area while dealing with and interpreting a beneficial legislation enacted to give effect to the Directive Principles of State Policy which is otherwise constitutionally valid, it was held that the consideration of the Court cannot be divorced from those objectives. Should there be any ambiguity in the language of a beneficial labour legislation, the 5-Judge Bench was emphatically unanimous that the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit

on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment.

g) Notwithstanding the aforesaid observations, if one were to proceed further on this path of enquiring into what the ID Act ought to signify in terms of its perceived policy objectives, i.e., whether worker-centric or employer-centric, this Court would, in effect, be treading the very ground that invites criticism of the approach adopted in the referring judgment, as can be evinced from the paragraphs below:

32. In the judgment of *Bangalore Water* [(1978) 2 SCC 213:1978 SCC (L&S) 215] Krishna Iyer, J. speaking for himself and on behalf of the other two Hon'ble Judges agreeing with him proceeded to deal with the interpretation of the definition of "industry" on a legal premise stating thus: (SCC p. 230, para 12)

"A worker-oriented statute must receive a construction where, conceptually, keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Articles 38, 39 and 43."

(emphasis supplied in original)

33. With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or *laissez faire*, the present structure of industrial law is an outcome of long-term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

(emphasis supplied)

- h) In this context, it must be observed that the decision in **Bangalore Water Supply** (supra) could not have been subjected to reconsideration in a reference merely on the basis of a perceived need to substitute the policy view that informed it. The exercise of reference jurisdiction is intended to correct defects in reasoning, not disagreement with policy. To entertain such a judicial course would be to traverse *de hors* the settled confines of judicial discipline, which proscribes questioning a precedent solely on the ground that an alternative policy perspective may seem more desirable.
- i) Viewed through the prism of the above-referred decisions [referred to in sub-paragraphs (d) to (f)] and many others, which are not referred to here (to avoid prolixity), and considering the objective of the ID Act, we disagree with the departure made in the referring judgment from the earlier liberal interpretation without proper justification. The only justification that can reasonably be traced is to protect the industry, and by extension the employer. We propose to discuss these facets a little later while dealing with the sixth reason. In any event, the shift appears unwarranted given the way this Court previously interpreted legislations origin whereof is traceable to the Directive Principles of State Policy.

(iii) Sovereign Functions

- a) In our view, the continued invocation of the idea of “sovereign functions” as a threshold device to exclude an activity from the

definition of “industry” is misplaced. In ***Bangalore Water Supply*** (supra), Hon’ble Krishna Iyer, J. did recognise a limited exception for sovereign functions, but the judgment itself shows the difficulty in defining what exactly falls within that category. Furthermore, Hon’ble Krishna Iyer, J. had also acknowledged in his opinion that even the inalienable functions of the State might have some elements of “industry”, which could be severable so as to bring them within the ambit of “industry” under Section 2(j)³⁴.

- b) This lack of clarity was later noticed in the referring judgment, where it was pointed out that there was no unanimity amongst the Hon’ble Judges on the meaning and contours of “sovereign functions”. Hon’ble Beg, C.J., in fact, expressed doubt about the use of the term altogether and suggested that exclusion should depend only on whether a service is governed by distinct constitutional or statutory rules, such as those under Articles 310 and 311 of the Constitution³⁵. Hon’ble Chandrachud, J. went a step further and opined that sovereign function did not call for any exemption from the definition of “industry”. His Lordship held that it is the nature of the activity that matters, not the identity of the employer. If an activity would be an industry when carried on by a private person, it does not cease to be so merely because it is undertaken by the State³⁶.

³⁴ [see paragraph 143(b) of ***Bangalore Water Supply*** (supra)].

³⁵ [see paragraph 163 of ***Bangalore Water Supply*** (supra)].

³⁶ [see paragraph 179 of ***Bangalore Water Supply*** (supra)].

- c) The said reasoning is also fortified by the scheme of the ID Act itself. The First Schedule [which provides for a list of “industries which may be declared to be public utility services under sub-clause (vi) of clause (n) of section 2” when “public emergency or public interest so requires”] includes **industries** (emphasis supplied) such as “Defence establishment” (Entry 8), Fire Brigade Service (Entry 10), India Government Mints (Entry 11), India Security Press (Entry 12), Service in the Uranium industry (Entry 19) and Services in the Bank Note Press, Dewas (Entry 22) – areas which are ordinarily understood as sovereign functions. The legislative intent is clear and unequivocal. The legislature did not intend to exclude industries associated with sovereign functions from the definition of “industry”.
- d) These inclusions predate ***Bangalore Water Supply*** (supra). However, the legislative interventions that ensued the judgment further accentuate the same intent. Notably, these include the Currency Note Press (Entry 25), Services in the International Airports Authority of India (Entry 27), and Industrial establishments manufacturing or producing Nuclear Fuel and components, Heavy Water and Allied Chemicals and Atomic Energy (Entry 28).
- e) This shows that the legislature did not intend to exclude such activities merely because they are performed by the State. The arguments noticed in the referring judgment, which seek either to expand “sovereign functions” to cover all welfare activities or to

confine it narrowly to inalienable functions, only highlight the confusion surrounding the concept. In either case, what is “inalienable functions” becomes uncertain and subjective.

- f) For these reasons, we are of the view that whether an activity is described as a “sovereign function” has little relevance in determining if it is an “industry” under Section 2(j). The correct approach, therefore, is to apply the functional test laid down in ***Bangalore Water Supply*** (supra), focusing on the nature of the activity and the employer-employee relationship. Any exclusion must emanate from a clear constitutional or statutory provision, and not from an uncertain and undefined notion of sovereignty.

(iv) Decision in *Safdarjung Hospital* (supra)

- a) ***Safdarjung Hospital*** (supra) was expressly overruled by ***Bangalore Water Supply*** (supra) but, according to ***Jai Bir Singh [5-J]*** (supra), the former was rightly decided and presents the correct position of law as to what is and what is not comprehended within “industry”.
- b) Question arising for decision in ***Safdarjung Hospital*** (supra) was whether a hospital is an “industry” within the meaning of the ID Act. A restricted meaning was attributed to the word “industry” by observing that industry would mean only trade and business, manufacture or undertaking analogous to trade or business for the production of material goods or wealth or material services. It is

not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in the commercial sense.

- c) Probing further, it is found that the 6-Judge Bench in ***Safdarjung Hospital*** (supra) discussed whether a public utility service is susceptible of being classified as an industry, merely by reason of its inclusion in the First Schedule by the Parliament or by the executive. Under consideration was Entry 9 of the First Schedule, viz. "service in hospitals and dispensaries". The Court rejected the contention that every public utility service included in the First Schedule would be classified as an "industry". In doing so, the Court first discussed Section 2(n)(vi) of the ID Act which states that any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service. The Court held that the services mentioned in the First Schedule have to answer the test of an "industry" run on commercial lines to produce something which the community can use. These goods are brought into existence in a commercial way analogous to a business where such production takes place. The Court also held that entries in the First Schedule are general in nature. For e.g. "Coal" by itself is not an industry; but certain aspects of dealing in it can be classified as an industry. However, the Parliament cannot add something which was not an industry in the first place. In conclusion, the Court held that mere

notification in the First Schedule is insufficient to convert non-industries under the ID Act to industries.

- d) With all the respect, reverence and admiration we have for the author of the decision in ***Safdarjung Hospital*** (supra) and the other Hon'ble Judges comprising the 6-Judge Bench, we find ourselves unable to subscribe to the line of reasoning that was adopted to rule in favour of the appellants/hospitals of not being covered by the definition of "industry". Why it does not commend to us is sought to be explained with reference to a simple illustration as well as the provisions of the ID Act.
- e) Let us assume that a technician is employed by the management of a hospital pursuant to a service agreement on monthly wages in a hospital having an X-ray unit. Patients are advised by the doctor to undergo X-ray examination. The technician is required to position the affected part of the patient's body under the X-ray machine. Once the image is captured, the condition of the affected part is reflected on the plate which along with a report of the radiologist is made over to the patient. The technician is not concerned whether the hospital is run for profit or as a charity; his concern is confined to performing the work for which he has been hired to the best of his ability and the payment of wages due for the work performed by him. Can it be contended with any degree of conviction that the work performed by the technician is not part of a systemic activity³⁷

³⁷ considered in greater details, at a later part of this opinion

carried on in cooperation between the employer and the workman and is, therefore, not covered by the expression "industry" as defined in Section 2(j) of the ID Act? We think not. It would, however, be an entirely different proposition if it is shown by the management that the technician, fully aware of the charitable nature of the hospital, did not intend to enter into and there was, in fact, no employer-employee relationship but agreed to put in gratuitous work for an honorarium.

- f) Moving now to the statutory scheme of the ID Act, more particularly Sections 2(n)(vi) and 22 read with the First Schedule [the heading of which reads "INDUSTRIES WHICH MAY BE DECLARED TO BE PUBLIC UTILITY SERVICES UNDER SUB-CLAUSE (VI) OF CLAUSE (N) OF SECTION 2"], it transpires that the Parliament has been conferred power to include certain **industries** (emphasis supplied) falling under the ambit of public utility services as defined in the ID Act. It rightly presupposes that the other entries, including those noted in the previous segment, in the First Schedule are industries whether wholly or in part. To say that after inclusion, the entries would then have to satisfy the test of an "industry" under the ID Act in a separate inquiry based on whether production of goods is on commercial lines which the community can use or whether such goods are brought into existence in a commercial way analogous to a business where such production takes place, that would run contrary to the express statutory scheme as mentioned hereinabove (emphasis

supplied). When the language of the statute is plain and clear and no absurd result is produced, it is not proper to read in the statute what does not appear or is not intended by its object. If one reads Section 2(n)(vi) with the First Schedule, the legislative intent is clear that the stated industries included in pursuance of such clause [clause (vi)] are providing public utility services and hence ought to be protected from strikes as in Section 22(1). Entry 9 is relatable to “services in hospitals and dispensaries”. Though this entry was not there in the ID Act, as originally enacted, by a legislative amendment it was included in the First Schedule.

g) Rightly so, **Safdarjung Hospital** (supra) stands expressly overruled by **Bangalore Water Supply** (supra).

(v) Reliance on Coir Board, Ernakulam [2-J] (supra), misplaced

a) Reliance placed by **Jai Bir Singh [5-J]** (supra) on the decision of **Coir Board Ernakulam [2-J]** (supra) to draw support for the view that **Bangalore Water Supply** (supra) requires reconsideration to our mind, again, is quite unsound. The request for a reference having been declined in **Coir Board Ernakulam [3-J]** (supra) and the appeals having been directed to be listed before the appropriate Bench for further proceedings, the order attained finality insofar as the question of reference of **Bangalore Water Supply** (supra) to a larger Bench is concerned. However, in the process of its reasoning, the referring judgment resurrected the view in **Coir Board Ernakulam [2-J]** (supra) as if the Bench in **Jai Bir Singh**

[5-J] (supra) were exercising intra-court appellate jurisdiction over the order passed in **Coir Board Ernakulam [3-J]** (supra). This was plainly impermissible.

- b) That apart, reference made by **Jai Bir Singh [5-J]** (supra) to past experience of the Supreme Court [since the time **Bangalore Water Supply** (supra) has been holding the field] being flooded with litigation arising from numerous awards of reinstatement with huge amounts as back wages, has left us disturbed and dazed, interminably, so to say. With respect, it is beyond our comprehension that such a ground could at all have weighed in the mind of the 5-Judge Bench as imperative, to make a reference. If the justice of a case before the tribunal/court arising out of an industrial dispute demands reinstatement of a workman/workmen with back wages, obviously upon a satisfaction being reached that the termination is illegal, and the same is reflected in the award, it is indeed unimaginable and sad that such awards were characterised as burdensome and a critical view thereof is taken to refer **Bangalore Water Supply** (supra) to a larger Bench. The overarching preambular promise to secure justice for all seems to have passed into oblivion while the 5-Judge Bench made the observation in paragraph 35 of the referring judgment that "*awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry*". More than anything else, this clearly evinces a drift towards a "pro-employer/anti-

labour” approach without supporting reasons, which we find to be repugnant and odious.

(vi) Reference to *Aeltemesh Rein* (supra), untenable

- a) Reference to ***Aeltemesh Rein*** (supra) by the 5-Judge Bench appears to be a plain and simple mistake. However, it is unknown to what extent such mistake had a bearing on the decision-making process. ***Aeltemesh Rein*** (supra) centred around non-enforcement of Section 30 of the Advocates Act, 1961 and had, not even remotely, anything to do with the ID Act. In any event, the observation made in paragraph 45 of the referring judgment that *“the pressing demands of the employers and the employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act”*, i.e., the amended definition of “industry” post-1982, is an imperative for a reference casts grave doubts about the acceptability of such a reason. ***Aeltemesh Rein*** (supra) and the decisions referred to therein are authorities for the proposition that even the Supreme Court cannot issue a mandamus to the Central Government to notify a particular law, enacted by the legislature. Once this proposition is accepted, it defies reason as to why (despite the legislature having amended the definition of “industry” accepting the interpretation placed on such word by the 7-Judge Bench) this Court should be goaded to revisit such interpretation. Certainly, the legislature and the executive are no pushovers. All three organs have their independent spheres of work

and each organ must be left free to do what the Constitution ordains it to do. Mr. C.U. Singh, learned senior counsel for a particular trade union is right in contending that the gun is sought to be placed on the Court's shoulder to fire. We conclude by observing that the reason in paragraph 45 of the referring judgment falls far short of an acceptable reason for ordering a reference and is plainly unacceptable.

- b) Moreover, the referring judgment records that in ***Aeltemesh Rein*** (supra), the Union of India had offered an explanation that, "*for employees belonging to categories of industries excluded under the amended definition, no alternative mechanism for redressal of service disputes had been provided, and that this constituted the reason for not bringing the amended definition into force*". However, upon repeated reading of ***Aeltemesh Rein*** (supra), we are unable to locate any such observation, submission, or explanation attributed to the Union of India. The record of that decision does not reflect the reasoning ascribed to it in the referring judgment. In the absence of any such material in the original judgment, we are constrained to hold that the referring judgment proceeds on an erroneous premise in this regard, having attributed to ***Aeltemesh Rein*** (supra) a position that is not borne out from the text of the decision.

- 39.** The short order dated 2nd January, 2017 in **Jai Bir Singh [7-J]** (supra), noticed above, did not go as far to examine the reasons for the reference in depth as we have undertaken; hence, no discussion is found there.
- 40.** Moving ahead, there is one other aspect that bears serious consideration. It is premised on the observations made by this Court in **State of Tamil Nadu v. Nellai Cotton Mills Ltd.**³⁸ [2-J].
- 41.** The genesis of the *lis* in **Nellai Cotton Mills** (supra) traces back to the enactment of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1982, which was brought into force with the object of conferring permanent status upon workmen who had rendered continuous service for a period of 480 days within 24 calendar months in an industrial establishment. Section 3 of the said enactment, being pivotal, not only mandated such conferment but also elaborated the concept of “continuous service” by including interruptions occasioned by sickness, authorised leave, strike, lockout, and other contingencies. The Explanation appended thereto bore significance inasmuch as it expanded the computation of days worked to include periods of lay-off, leave with wages, temporary disablement and maternity leave.
- 42.** The constitutional validity of the said enactment came to be assailed before the High Court of Madras in a cluster of writ petitions by several industrial establishments. Upon consideration, the High Court partly

³⁸ (1990) 2 SCC 518

allowed the challenge, *inter alia*, holding the Explanation to Section 3 to be unenforceable and redundant, striking down a portion of Section 3(2) on the anvil that it imposes an unreasonable restriction on the employer's rights, and clarifying that apprentices and badli workers would not fall within the ambit of "workman" for the purposes of the provision. The High Court further held that the Act would neither supersede settlements between employers and workmen nor operate retrospectively.

- 43.** Aggrieved thereby, the State preferred an appeal and, during its pendency, introduced amendments by way of Amending Act 44 of 1985 with a view to obviate the practical impediments highlighted in the judgment. The Amendment Act recalibrated the Explanation to Section 3 by deeming certain periods as amounting to continuous service and introduced an additional Explanation expanding the meaning of "law" to subsume awards, agreements and settlements as well. A validation clause was also incorporated *vide* the amending Act to retrospectively validate actions taken under the principal Act.
- 44.** In this backdrop, the interpretative question arose as to whether the subsequent legislative amendments evinced an intention to depart from, or to endorse, the construction placed by the High Court.
- 45.** It is in this milieu that the principle assumes relevance that subsequent legislative action/inaction, post any judicial engagement with the legislation, may furnish a legitimate indicator to discern legislative approval or disapproval of the ratio laid down in the judgment.

Interestingly, while the legislature therein addressed certain operational difficulties through the amendment, it did not re-enact or validate the portion invalidated by the High Court, thereby lending credence to the inference that the judgment of the High Court stood accepted to that limited extent.

46. It would be profitable for the present discussion to quote the relevant paragraph from such decision hereinbelow:

8. When the Act has been judicially interpreted, courts may study the subsequent action or inaction of the legislature for clues as to legislative approval or disapproval of judicial interpretation. After the statute has been judicially interpreted in a certain way and if the legislature by taking note of the judgment amended the statute appropriately so as to give it a different meaning from the one asserted by the courts, or not giving any different meaning from the view taken by the court, it may be argued with some justification that the legislature has expressly or by implication ratified the judicial interpretation. In the instant case, the legislature has expressly taken note of the High Court verdict and removed the practical difficulties caused thereby in implementing the provisions of the Act, by appropriate amendments. No provision, however, was inserted to rewrite and validate the portion which was struck down by the High Court. It could therefore, be reasonably held that the legislature has accepted the judgment of the High Court to the extent indicated.

(emphasis supplied)

47. The exposition of law in ***Nellai Cotton Mills Ltd.*** (supra) is that events transpiring after a judicial interpretation of a term in an opinion are material to ascertain the legislative approach of approval or disapproval of such interpretation. If approved, the legislature may not intervene; however, if it is disapproved, the legislature may step in with a legislation to remove the basis of such interpretation. With utmost respect, this exposition in ***Nellai Cotton Mills Ltd.*** (supra) does not appear to have engaged the attention of either ***Jai Bir Singh [3-J]***

(supra) or **Jai Bir Singh [5-J]** (supra). Though **Nellai Cotton Mills Ltd.** (supra), being a 2-Judge Bench decision was not binding on Benches of larger strength, **Coir Board Ernakulam [2-J]** (supra) was certainly bound unless it differed. Nevertheless, the exposition in **Nellai Cotton Mills Ltd.** (supra) leaves its own imprint, particularly when read with the caveat in **Bangalore Water Supply** (supra) that its construction of “industry” was, *prima facie*, to endure till the legislature steps in to substitute it by a more precise definition. Parliament by the 1982 amendment did step in. It did not completely disapprove **Bangalore Water Supply** (supra): the triple test was approved but the definition of “industry” was calibrated by narrowing its width as explained therein by excluding hospitals, charitable institutions, clubs, etc. What none could scarcely have imagined was that, though the legislature did act and step in by partial approval and partial disapproval, the executive would stall the enforceability of the new/amended definition. It is evident from the Lok Sabha records that enforcement of the amended definition of “industry” was deferred pending review due to representations submitted by stakeholders, while all other provisions of the 1982 amendment were brought into force. For four decades thereafter, both the legislative and executive wings accepted the *status quo* - the 1982 amendment on paper, **Bangalore Water Supply** (supra) in practice till such time the 2020 Code was enacted and enforced quite recently. To equate such executive deferral with legislative acquiescence is to invert separation of powers. Thus, when

legislative response had intervened to calibrate **Bangalore Water Supply** (supra), the will of the people did not translate into law for a reason not anticipated, and the political branches themselves acquiesced in the prevailing arrangement since 1985, it is indeed questionable whether the reference made by **Jai Bir Singh [3-J]** (supra) did clothe **Jai Bir Singh [5-J]** (supra) with the competence and authority to doubt **Bangalore Water Supply** (supra), rendering the reconsideration otiose.

48. Proceeding further ahead, we may observe that the doctrine of *stare decisis* enjoins that a precedent, particularly one laid down by a larger bench of 7 (seven) Judges and followed for decades, be revisited only upon satisfaction of exacting tests: manifest error, public mischief, or a conflict of decisions of coordinate Benches. Mere disagreement with a prior view or the mere passage of time requiring a relook does not warrant a reference to a larger Bench. Judged by that standard, **Jai Bir Singh [5-J]** (supra) carries chinks in its armour too prominently so as to justify unsettling **Bangalore Water Supply** (supra). **Jai Bir Singh [5-J]** (supra) neither identified any 'manifest error' nor inter-bench conflict; at its extreme, it only had a policy discomfort with the width of the triple test. Unfortunately, **Jai Bir Singh [5-J]** (supra) pointed to no alternative workable formulation to the triple test it faulted, and omitted in undertaking the inquiry required by **Keshav Mills Co. Ltd.** (supra) as to why a 27-years old rule settled across multiple Benches should be unsettled. Its reliance on **Safdarjung Hospital** (supra), a precedent

Bangalore Water Supply (supra) had expressly overruled, further offended settled canons of precedent. In seeking to pierce the patina of permanence that **Bangalore Water Supply** (supra) had acquired, **Jai Bir Singh [5-J]** (supra) fails the procedural discipline [emphasized in **Shah Faesal** (supra)] and the substantive discipline of *stare decisis*. Sadly, **Jai Bir Singh [5-J]** (supra) sought to destabilise the old order without erecting any jurisprudential structure to replace it.

49. In **Chandra Prakash v. State of U.P.**³⁹ [5-J], this Court, after considering a series of precedents, reiterated the principle of binding precedent in following words:

22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.

(emphasis supplied)

50. We should not be misunderstood in our critique of the referring judgment as if, being part of the 9-Judge Bench that has been constituted, we are sitting in appeal thereagainst. This exercise has been necessitated solely for the limited purpose of ascertaining whether due process had been followed or not.

³⁹ (2002) 4 SCC 234

51. Finally, the *raison d'être* behind the referring judgment to make the reference is captured in the first couple of lines of paragraph 24, reading thus:

24. In any case, no such inhibition limits the power of this Bench of five Judges which has been constituted on a reference made due to apparent conflict between judgments of two Benches of this Court. As has been stated by us above, the decision in *Bangalore Water* is not a unanimous decision.

52. We unhesitatingly conclude by recording that the reasoning in ***Jai Bir Singh [5-J]*** (supra) does not satisfy the aforementioned principles for reviewing earlier decisions of this Court as laid down in ***Keshav Mills Co. Ltd.*** (supra). To reconsider the definition of “industry” and giving it a narrower frame than what is elaborated in ***Bangalore Water Supply*** (supra) would run contrary to public good. It would result in defeating the purpose of the ID Act which, undoubtedly, is a social welfare and worker-oriented legislation. Furthermore, since 1978, the decision in ***Bangalore Water Supply*** (supra) has been followed/relied on by this Court in at least 84 decisions⁴⁰ and no compelling reasons do appear for disturbing the field set by it. We are also unable to accept the reasons given in ***Jai Bir Singh [5-J]*** (supra), which *inter alia* include the Government’s difficulty and reluctance in bringing the amended definition of “industry” into force, as either valid or sufficiently compelling for the present reference. Lastly and most importantly, to reconsider the decision at this distance of time would inevitably result in tremendous public inconvenience and hardship for the workmen as well

⁴⁰ list furnished by Mr. C.U. Singh

as other parties embroiled in pending reference / litigation under the ID Act.

- 53.** Having furnished our own reasons as to why the reasons given in **Jai Bir Singh [5-J]** (supra) and **Jai Bir Singh [7-J]** (supra) are insufficient to warrant a reference, we record having failed to find any discussion there on how the decision in **Bangalore Water Supply** (supra) has become unworkable. Not to speak of the tests laid down in **Keshav Mills Co. Ltd.** (supra), even in view of the principles laid down in **Dr Shah Faesal** (supra), there does not exist any valid ground which could justify referring **Bangalore Water Supply** (supra) to a larger Bench.
- 54.** *Arguendo*, assuming for once, that **Bangalore Water Supply** (supra) has become unworkable, declaring it so at a point when the ID Act no longer survives in the same form, and when the number of pending cases before the Industrial Tribunals and the Labour Courts may not be substantial, is a factor that militates against the need for reconsideration. If reconsideration was indeed required, the same ought to have been undertaken soon after the opinion in **Jai Bir Singh [5-J]** (supra) was expressed in 2005; or even in 2017, soon after **Jai Bir Singh [7-J]** (supra) referred the issue to the Chief Justice for constituting a 9-Judge Bench. This reference has come before this 9-Judge Bench only 9 (nine) years after **Jai Bir Singh [7-J]** (supra). The numbers may be a mere coincidence but the coincidence ends there: the intervening years have hardened the law on the ground, and the Court now faces a test of doctrine and of institutional resolve.

55. When a reference itself lingers for more than 2 (two) decades, the doctrine of *stare decisis* is tested twice over – first against the standards set by **Keshav Mills Co. Ltd.** (supra) and second, against the Court’s own inability to give finality. **Bangalore Water Supply** (supra) has been applied by smaller Benches of this Court, the high courts, the tribunals, and employers every day of that delay. To disturb it now without meeting the highest threshold would suggest that judicial doubt, not judicial reasoning, drives the law.
56. It is trite, no court should feel inhibited to do whatever the justice of a case demands, based on the principle of *ex debito justitiae*; but a little more introspection could have dispelled the unfounded notion that **Bangalore Water Supply** (supra) requires reconsideration and, thereby, clear the doubt as to its efficacy as a binding precedent.
57. In fine, while **Jai Bir Singh [5-J]** (supra) omitted to consider several precedents which is striking, the *coup de grace* is its failure to notice that **Bangalore Water Supply** (supra) was self-limiting.
58. We, thus, have no hesitation to reject the reference.

RESTORING CLARITY TO THE DEFINITION OF ‘INDUSTRY’ IN SECTION 2(j)

59. Having said thus, we intend to assign our brief reasons why the elaborate and enlightening opinion in **Bangalore Water Supply** (supra) on interpretation of the term “industry” in the ID Act requires no tinkering at all, much less any reconsideration.
60. Primarily the question before this larger Bench is, how to interpret Section 2(j) of the ID Act defining “industry”? Hence, it would be

profitable to begin by reading portions of the definition clause [Section 2 of the ID Act] and then some of the other provisions having a bearing on the said question. The need to navigate through the ID Act itself arises owing to scant reference being made to it by learned senior counsel/counsel for the parties advocating a reconsideration of ***Bangalore Water Supply*** (supra).

61. Relevant clauses of Section 2 read as under:

"Section 2. - In this Act, unless there is anything repugnant in the subject or context,-

(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

(g) 'employer' means—

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

(s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(n) 'public utility service' means—

(i) any railway service or any transport service for the carriage of passengers or goods by air;
 (i-a) any service in, or in connection with the working of, any major port or dock or any industrial establishment or unit engaged in essential defence services;
 (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
 (iii) any postal, telegraph or telephone service;
 (iv) any industry which supplies power, light or water to the public;
 (v) any system of public conservancy or sanitation;
 (vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:
 Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension;
 ...”.

62. Pausing for a moment, it would be worthwhile to understand what the objective of a definition clause is. Useful reference can be made to the decision in **SBI v. M.J. James**⁴¹ where, after noting precedents and Bennion on Statutory Interpretation, this Court speaking through Hon’ble Sanjiv Khanna, J. ruled that:

“**20.** ... The objective of definition clauses is to avoid frequent repetition in describing the subject-matter to which the word or expression is intended to apply. [Nahalchand Laloochand (P) Ltd. v. Panchali Cooperative Housing Society Ltd. : (2010) 9 SCC 536]. This is useful when the same word or expression is used more than once in the same enactment [Bhagwati Developers (P) Ltd. Peerless General Finance and Investment Co. : (2013) 9 SCC 584]. The *raison d’être* behind the definition clause is that while interpreting a provision, the defined word or expression would carry the same meaning as the defined words or expression are employed and used by the maker in the sense appropriate to the definition. The definition can be with the intent to attract a meaning already established by law; expand the meaning by adding a meaning; or narrow the meaning by exclusion [Part XII, Rules of Construction Laid Down by Statute, Sections 199 and 200 at p. 517, Bennion on Statutory Interpretation, Indian Reprint, 6th Edn.]. This general rule of construction laid down by the enactment is subject to the context. Albeit, the interpreter, to deviate from the defined meaning, should record reasons to show that the word/expression in that

⁴¹ (2022) 2 SCC 301

particular provision carries a different meaning. Contrary context is not to be assumed or accepted easily, in the absence of indication and reason to differ from the defined meaning. The repugnancy will arise when the definition meaning does not agree with the subject in the context.

- 63.** Now reverting to the definition of the word “industry” noted above, it means any business, trade, undertaking, manufacture or calling of employers; and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.
- 64.** To carry forward the discussion, one may trace what trade, business, undertaking, etc. appearing in Section 2(j) means in the common parlance.
- (i) Trade means exchange of goods for goods or goods for money.
 - (ii) Business means an enterprise which is an occupation as distinguished from pleasure.
 - (iii) Undertaking is a word of variable meaning. As a noun, it can mean a formal promise or an assurance. The said word, as a noun, can be also used interchangeably with a project or enterprise or even business. However, when used in the sense of undertaking a business, it is a transitive verb. In the given context, the noun would fit into the second meaning.
 - (iv) Manufacture is a kind of productive activity in which the making of articles or material (often on a large scale) is by physical labour or mechanical power.
 - (v) Calling denotes the following of a profession or trade.

- (vi) Service again has different shades of meaning. Work done for somebody fits the context best.
- (vii) Employment is a noun derived from the word 'employ', which is a transitive verb. The word 'employ' for the purpose of understanding employment would mean payment made by one to the other in *lieu* of work done by him. A common example would be, the company employs hundreds of persons.
- (viii) Insofar as workmen are concerned, apart from calling, service and employment, we find the words "handicraft, or industrial occupation or avocation of workmen".
- (ix) Handicraft is an activity needing skill with the hands as well as artistic ability. An object that is produced by this activity is also called handicraft. The first meaning is what seems apt in the context.
- (x) Industrial occupations refer to jobs focused on transforming materials into finished products and are characterised by being manual-labour intensive.
- (xi) Finally, avocation is some activity which is done for enjoyment and pleasure outside of one's regular profession; it is sort of a non-work interest.

- 65.** We find no reason to deviate from the common parlance meaning of these words/nouns while construing the defined meaning of the noun "industry".
- 66.** Now, the word "industry" wherever it is used in the ID Act has to be understood by tracing its meaning to Section 2(j) unless, of course, the

context otherwise requires. The word “industry” is used in various provisions of the ID Act⁴² where it is to be read as a noun. However, at least in 3 (three) sections of the ID Act⁴³, the words “industry being carried out” have been used. While ascertaining the meaning of such a phrase, one needs to fall back on Section 2(j). Thus, “industry being carried out” would be akin to trade or business or undertaking or manufacture or employment or handicraft or industrial occupation being carried out. When the statute says “industry being carried out”, the focus is on the action, making “industry” describe an activity in the sense of a verb. Similarly, when read like trade or business or employment or handicraft or industrial occupation being carried out, all these words which are nouns, i.e., trade, business, undertaking, employment, handicraft, industrial occupation, etc. are more like activities, focusing on the action involved in course thereof, thereby leaning towards a verb rather than a noun. Although Section 2(j) has a ‘means’ part as well as an ‘includes’ part, each such part is not to be read in isolation but both parts are to be read in conjunction to understand what the word “industry” connotes *qua* both employer and workmen.

- 67.** It is this planned, organised, regular, interconnected and continuous activity carried out by the employer and the workmen in collaboration with each other according to a system or method – not a random or one-off – for an identified purpose is what is a systematic activity. According

⁴² Sections 2(ee), 2(i), 2(j), 2(q), 2(n), 2(s), 9B, 10H, 25F, 36

⁴³ Sections 2(a)(i), 2(g), 2(ka)

to Hon'ble Krishna Iyer, J. the activity must be systematic in the sense of being organised as a system. Such prong is now read by courts as systemic activity. Though the word used was systematic, the meaning given was systemic. Core systemic activities in a typical industry would include procurement, production/manufacturing, quality control, human resources management, inventory and logistics, marketing and sales, finance and accounts maintenance, research and development, and compliance of statutory requisites. To wit, manufacture is a systemic activity which would ordinarily include procurement, processing and assembling of raw materials and distribution of the finished product through coordinated steps. When the Bench referred to systemic activity in ***Bangalore Water Supply*** (supra), it pointed to this web of organised, interdependent functions.

68. Thus, systemic activity is the foundation on which the legal concept of "industry" rests.
69. Though the ultimate object of undertaking such systemic activity resulting in the production of goods and materials, provision of services, generation of energy, and the like is to cater to human needs and fulfil desires, in reality as well as in law, the motive that drives an employer to run an industry and the object with which a workman puts his labour are distinct and different. At the advent of the ID Act in 1947, industries were synonymous with profit making establishments. However, over the course of decades, manufacturing and consequently, industries, have evolved in a dynamic manner. Profit no more remains the fulcrum of an

industry. Thus, as enunciated above, profit need not be a *sine qua non* for an industry and even a non-profit making establishment would be classified as an industry. To a poor workman, the employer's gains from the activity are immaterial; his concern is with the wages earned at the end of the day/month.

- 70.** Leaving aside legal semantics and reading each word used in clause (j) of Section 2, it is clear that the several expressions which appear after 'means', viz. business, trade, undertaking, manufacture or calling, and after 'includes', viz. calling, service, employment, handicraft, industrial occupation, avocation, are activities which satisfy the triple test as propounded by Hon'ble Krishna Iyer, J. and, therefore, are covered by the definition of "industry" in the ID Act (emphasis supplied). In this context, the expressions business, trade, undertaking, manufacture, calling, service, employment, etc. have been used in the sense of a noun and the adjective 'any', qualifying such noun (the activities), should be given its ordinary meaning; it cannot be given a restricted meaning so that the activities other than trade and business, if they do not align with or are not related with trade or business, would remain out of the purview of the word "industry" (emphasis supplied).
- 71.** In our considered opinion, the statutory framework engrafted in Section 2(j) of the ID Act and the judicial exposition for determining what constitutes an "industry", namely, the triple test, operate in complete harmony, each reinforcing the other (emphasis supplied).

72. Even, the learned Attorney did not find fault with the triple test but he only appealed for exercise of caution. The learned Attorney, in fact, expressly accepted the continued validity of the triple test as a sound exposition of law under the ID Act, and limited his submission to cautious application of the said test. Be that as it may, we advert to the concession of the learned Attorney only in passing, for it does not constitute the basis of our determination.

CONCLUSION

73. This briefly is our understanding of the word “industry” which, in our considered opinion, aligns with the meaning attributed to it in ***Bangalore Water Supply*** (supra).
74. The discussion on the topic would, however, remain incomplete without noticing paragraph 145 of ***Bangalore Water Supply*** (supra) where Hon’ble Krishna Iyer, J. made it clear that the meaning attributed to the word “industry” was transient in nature. The relevant passage reads:

145. We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the “conscience” portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where ILO norms are advancing and India needs updating. We feel confident, in another sense, since Counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of life — Indian life — at the threshold of the decade of new development in which labour and management, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller Bench for disposal on the merits in accordance with the principles of law herein laid down.

- 75.** What was conceived as an interim judicial formulation, however, has, through more than four decades of executive inertia, acquired the character of settled law. Time, by itself, cannot confer permanence upon what was intended to be transient; yet, neither can the passage of time and consistent reliance upon a legal position be disregarded without compelling justification. In our considered view, the reference before us discloses no such justification.
- 76.** To be clear: the reference made by ***Jai Bir Singh [5-J]*** (supra), followed by ***Jai Bir Singh [7-J]*** (supra), was not necessary and serves no practical, jurisprudential or doctrinal purpose. The reference seeks to disturb a quietus that has held the field for nearly half a century. The uninterrupted application of the law in ***Bangalore Water Supply*** (supra) having converted an arrangement, transient in origin, into the institutional and in light of the 2020 Code becoming operational since February, 2026, we conclude by observing that while the reference requires no answer, it must be said plainly: ***Bangalore Water Supply*** (supra) does not require reconsideration (emphasis supplied). Finality in law would be undermined without any corresponding public interest being served. We must remember: institutional credibility lies in respecting finality, not in perpetuating doubt; and, absent compelling justification, none of which exists here, the chapter must be treated as closed.

77. In light of the foregoing discussions, we answer the three questions framed by the 3-Judge Bench vide order dated 16th February, 2026 as follows:

Question (i) – The opinion rendered by Hon’ble Krishna Iyer, J. in ***Bangalore Water Supply*** (supra) [for 3 (three) of the member Judges of the 7-Judge Bench, with which Hon’ble Beg, CJ. and Hon’ble Chandrachud, J. concurred], correctly interprets “industry” as defined in Section 2(j) of the ID Act. The 1982 amendment and the definition of “industry” in the 2020 Code would have no impact on the interpretation of the expression “industry” as contained in the ID Act, which was to remain operational till legislature stepped in with a new legislation.

Question (ii) – The question has to be answered in the affirmative in view of our reasoning above.

Question (iii) – In view of the conclusions recorded in the precedents which were affirmed by ***Bangalore Water Supply*** (supra) and regard being had to our concurrence with the said decision, this question is redundant and we need not separately explore which of the activities would constitute “sovereign functions”.

78. We, therefore, order that all pending references arising out of industrial disputes made under the ID Act ought to be taken to its logical conclusion in accordance with the law on interpretation of the word “industry” subsisting prior to operationalisation of the 2020 Code.

79. Since the Bench was informed of a likely challenge to the 2020 Code, nothing observed here shall have any effect on such challenge.

- 80.** To conclude, we reject the reference for the reasons discussed above and hold that the term “industry” as interpreted and explained in ***Bangalore Water Supply*** (supra) requires no reconsideration.
- 81.** All pending matters may now be placed before an appropriate Bench, upon obtaining orders from the Chief Justice.
- 82.** We sincerely appreciate the efforts of the learned Attorney, all learned senior counsel/counsel for the parties and the learned amici curiae, Mr. Jamshed Cama and Mr. P.S. Sen Gupta, senior advocates for their wholehearted and erudite assistance in enlightening us to facilitate rendition of this opinion.

.....J.
(DIPANKAR DATTA)

.....J.
(UJJAL BHUYAN)

**NEW DELHI;
AUGUST 20, 2026.**