REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.897 OF 2002

State of Uttar Pradesh .....**Appellant(s)**

VERSUS

Jai Bir Singh .....**Respondent(s)**

WITH

Civil Appeal No.1276/2001

AND

Civil Appeal No.1278/2001

Civil Appeal No.1279/2001

Civil Appeal No.6114/2001

Civil Appeal No.8597/2001

Civil Appeal No.2409/2002

Civil Appeal No.2506/2002

Civil Appeal No.4569/2002

Civil Appeal No.5101/2002

Civil Appeal No.6108/2002

Civil Appeal No.6471/2002

SLP(C) No.20982/2002

Civil Appeal No.355-358/2003

Civil Appeal No.7994/2004

SLP(C) No.11291/2004

SLP(C) No.14085/2004

SLP(C) No.14127/2004

SLP(C) No.4139/2005

Civil Appeal No.1273/2007

Civil Appeal No.1274/2007

Civil Appeal No.3647/2007

Civil Appeal No.4646/2007

SLP(C) No.16301/2007

Civil Appeal No.296/2008

Civil Appeal No.1311-1312/2008

SLP(C) No.3107/2008

SLP(C) No.4327/2008

SLP(C) No.4328/2008

SLP(C) No.4329/2008

SLP(C) No.16276/2008

SLP(C) No.17224/2008

SLP(C) No.1112/2009

SLP(C) No.7990/2009

Civil Appeal No.3920/2010

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J U D G M E N T

Joymalya Bagchi, J.

1. I am in humble agreement with the opinions of the Hon'ble the Chief Justice and my revered brother Justice Narasimha, that the reference was validly made. But with the deepest respect and humility, I am unable to agree with the reformulation of the triple test propounded in *Bangalore Water Supply & Sewerage Board v. A Rajappa*[1] vis-a-vis the definition of "industry" by Hon'ble the Chief Justice. In this regard, I respectfully concur with the opinions of my revered sister Justice Nagarathna and revered brother Justice Datta, that the triple test propounded in *Bangalore Water Supply* (supra) correctly determines the scope and ambit of "industry" under the Industrial Disputes Act, 1947[2]. However, I am *ad idem* with the Hon'ble the Chief Justice and my revered colleagues on the final outcome that the ratio in *Bangalore Water Supply* (supra) would be confined to disputes pending under the repealed law, and the new law, namely the Industrial Relations Code, 2020[3] shall be independently interpreted.

2. With these prefatory words, I proceed to answer the reference.

INTRODUCTION

3. The present reference is the culmination of nearly five decades of judicial experiment with the definition of "industry" in Section 2(j) of the ID Act,

[1] (1978) 2 SCC 213
[2] Hereinafter "ID Act"
[3] Hereinafter "IR Code"

a provision situated within a legislative framework designed to preserve industrial peace, secure social harmony, and balance the competing claims of labour, capital, and the consuming public.

4. *Bangalore Water Supply* (supra) was an inclusive interpretive exercise to distil the true import of the word “industry”. Speaking through Krishna Iyer, J., the majority articulated what has since come to be known as the “triple test”, expanding the definition to cover any systematic activity organised through employer employee cooperation for the production or distribution of goods and services calculated to satisfy human wants[4]. Interrogating this expansive understanding of industry forms the backdrop of the present reference. Though for four decades *Bangalore Water Supply* (supra) sought to settle the law, its breadth continued to be a source of continuing debate. The definition, as interpreted, brought within the sweep of industry a wide range of activities in the nature of welfare schemes, Government departments, statutory bodies, hospitals, educational and religious institutions, clubs, research bodies and liberal professions. In doing so, it set into motion a series of judicial responses - some accepting, some refining, and others quietly resisting its reach.

TRACING THE REFERENCE

5. To understand how the reference questioning *Bangalore Water Supply* (supra) came into being, it is necessary to refer to the first inflection point

[4] See Para 140

in this long journey, namely, *Coir Board, Ernakulam, Cochin & Anr v. Indira Devai P.S. & Ors* (2J)[5]. A two Judge Bench, while applying *Bangalore Water Supply* (supra), recorded reservations as to its correctness and the matter was directed to be placed before the Chief Justice to consider whether a larger Bench should be constituted to reconsider the decision in *Bangalore Water Supply* (supra).

6. The proposed reference in *Coir Board* (2J) (supra) came to be placed before a three Judge Bench in *Coir Board, Ernakulam, Kerala State & Anr v. Indira Devai P.S. & Ors* (3J)[6]. The request for reference was declined on two grounds. First, the Bench was of the view that a two Judge Bench could not seek reconsideration of *Bangalore Water Supply* (supra), which had been rendered by a seven Judge Bench. Secondly, on merits, it found no occasion to reopen the issue, since the ratio in *Bangalore Water Supply* (supra) had held the field for more than two decades and Parliament had, in the meantime, introduced a new definition of "industry"[7], though the amended provision had not yet been brought into force.

7. The present reference stems from the doubt expressed with regard to the expansive formulation of the definition of industry in *State of Gujarat & Ors v. Pratamsingh Narsinh Parmar*[8], where the Court was called upon to consider whether the Forest Department is an "industry". The Bench

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[5] (1998) 3 SCC 259
[6] (2000) 1 SCC 224
[7] Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982)
[8] (2001) 9 SCC 713

noted that the High Court had erred in mechanically following an earlier case, namely, *Chief Conservator of Forests & Anr v. Jagannath Maruti Kondhare & Ors*[9] (where the same question had arisen), without examining the factual matrix that the employee had failed to assert the nature of duties discharged by him and the character of the establishment in which he had been recruited, so as to prove that the latter was an "industry". While distinguishing *Chief Conservator* (supra) on facts, the Bench observed that "*ordinarily, a department of the Government cannot be held to be an industry and rather it is a part of the sovereign function.*" This observation appears to sit uneasily with the ratio in *Chief Conservator* (supra), where the three Judge Bench had given a restricted meaning to sovereign functions, to be understood as such functions for which the State is not answerable in a Court of law, and not to include public and statutory duties. Noticing the cleavage between *Chief Conservator* and *Narsinh Parmar* (supra), the three Judge Bench in *State of U.P. v. Jai Bir Singh* (3J)[10] directed as follows:

> "*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.*"

[9] (1996) 2 SCC 293
[10] Order dated 31.01.2002 in SLP (C) No. 10411/2001 – *State of UP v. Jai Bir Singh*

8. The matter thereafter reached the five Judge Bench in *State of U.P. v. Jai Bir Singh* (5J)[11]. The Bench culled out several foundational reasons for doubting the *Bangalore Water Supply* (supra) ratio, namely:

I. *Bangalore Water Supply* (supra) was not unanimous, and the principal opinion of Krishna Iyer, J., did not have the benefit of the separate opinions delivered later by the other judges. Further, the judges themselves treated the interpretive exercise as provisional pending legislative intervention[12]

II. Parliament had amended the definition of industry by Act 46 of 1982, yet the amended provision had remained unenforced for more than two decades. This prolonged non-enforcement was viewed not merely as legislative inaction, but as reflecting the difficulty faced by the legislature and executive in bringing the amended law into force after *Bangalore Water Supply* (supra)[13]

III. The working experience of the law after *Bangalore Water Supply* (supra) had revealed practical difficulties, including proliferation of industrial claims, awards of heavy back wages, and the possible consequences of an overextended definition on employers, employees, and the public[14]

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[11] (2005) 5 SCC 1
[12] See Paras 24-25
[13] See Paras 21 & 40
[14] See Para 35

IV. A purely workman centric reading of the ID Act could not be accepted, since the statute was intended to harmonise employer employee relations in the larger interest of industrial peace[15]

V. The narrow treatment of sovereign functions in *Bangalore Water Supply* (supra) required reconsideration, particularly because welfare activities undertaken by the State in discharge of its obligations under Part IV may also bear a sovereign character in a constitutional democracy[16]

VI. The restrictive principle in *Safdarjung Hospital* (supra) had considerable force. Although profit motive may not be determinative, the activity must still be analogous to trade or business in a commercial sense, especially when applied to institutions such as hospitals and schools, where industrial action may frustrate their core public purpose[17]

9. On the cumulative force of these aforestated reasons, the Bench concluded as follows[18]:

> *"Let the cases be now placed before Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgment of this Court in the case of Bangalore Water"*

[15] See Paras 32-33 & 37
[16] See Para 38
[17] See Paras 41-42
[18] See Para 46

10. When the matter was placed before the Chief Justice, presumably bearing in mind the lesser strength in *Jai Bir* (5J), the Chief Justice placed the matter for reconsideration of the ratio in *Bangalore Water Supply* (supra) before a bench of co-equal strength, that is, a seven Judge Bench. The seven Judge Bench in *State of U.P. v. Jai Bir Singh* (7J)[19], presided over by the Chief Justice, accepted the doubts expressed by the five Judge Bench about the correctness of the view taken in *Bangalore Water Supply* (supra) and noted the issue that fell for determination had wide ranging implications. The appeals were directed to be placed before the Chief Justice for constituting an appropriate nine Judge Bench to answer the questions raised in the reference order passed by the five Judge Bench. Accordingly, the present nine Judge Bench came to be constituted.

11. Before turning to the arguments advanced during the course of hearing and examining the ratio in *Bangalore Water Supply* (supra) on merits, one preliminary objection may be noticed. Ms. Jaising strenuously argued that the two Judge Bench in *Narsinh Parmar* (supra) did not take a different view from that of the judgment in *Chief Conservator* (supra). According to her, *Narsinh Parmar* (supra) merely distinguished *Chief Conservator* (supra) on facts. It was, therefore, urged that the subsequent references made in *Jai Bir* by Benches of lesser strength, doubting the correctness of *Bangalore Water Supply* (supra), a seven Judge Bench decision, were not maintainable.

[19] (2017) 3 SCC 311

12. I am unable to agree with this demurrer. The validity of the present reference cannot be tested solely by reference to the original trigger. When the matter reached the five Judge Bench in *Jai Bir* (5J) (supra), the Court did not rest the reference merely on the perceived tension between *Chief Conservator* (supra) and *Narsinh Parmar* (supra). It doubted the ratio in *Bangalore Water Supply* (supra) for various other reasons and directed that the papers be placed before the Chief Justice for constitution of a suitable larger Bench. Thereafter, the Chief Justice, keeping in mind that *Jai Bir* (5J) (supra) was a Bench of lesser strength than *Bangalore Water Supply* (supra), a seven Judge Bench decision, placed the matter before a Bench of co-equal strength for consideration. That seven Judge Bench, in turn, directed that the matter be placed before the Chief Justice for constitution of a nine Judge Bench. Such state of affairs squarely falls in line with the settled position of law governing references, as laid down in *Central Board of Dawoodi Bohra Community v. State of Maharashtra*[20].

13. In *Dawoodi Bohra* (supra), a two Judge Bench sought reconsideration of the five Judge Bench decision in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*[21], and directed that the case be listed before a seven Judge Bench[22]. Pursuant to such direction, the matter initially came up before a seven Judge bench and subsequently was placed before a five

[20] (2005) 2 SCC 673, See Para 12
[21] 1962 SCC OnLine SC 143
[22] WP (C) No. 740/1986, order dated 18.03.1994

Judge bench to consider the validity of such reference. While laying down the governing principle that a Bench of lesser strength is bound by the law declared by a Bench of larger strength and cannot dissent from or disregard such law, the five Judge Bench in *Dawoodi Bohra* (supra) underscored that where a Bench of lesser strength entertains doubt about the correctness of a larger Bench decision, it may only invite the attention of the Chief Justice to that doubt. The Chief Justice is not bound to constitute a larger Bench in every such case and, as master of the roster, retains the discretion to place any matter before a Bench of such strength as he considers appropriate. Applying that principle to the facts of *Dawoodi Bohra* (supra), the Bench held that the matter should first be placed before a Bench of five Judges, and not directly before a larger Bench of seven Judges. It was only if that co-equal Bench doubted the correctness of *Sardar Syedna* (supra) that it could opine in favour of a reference to a larger Bench of seven Judges, or such other strength as the Chief Justice, in exercise of his power to frame the roster, may deem fit to constitute.

14. The ratio in *Dawoodi Bohra* (supra) again fell for interpretation before a seven Judge Bench in *Aligarh Muslim University v. Naresh Agarwal*[23]. In *Aligarh Muslim University* (supra), the preliminary objection was that the two Judge Bench in *Anjuman-e-Rahmaniya v. District Inspector of Schools*[24] could not have directly referred the correctness of *S. Azeez*

[23] (2025) 6 SCC 1
[24] WPs (C) Nos. 54-57 of 1981, order dated 26-11-1981 (SC)

Basha v. Union of India[25], a five Judge Bench decision, to a seven Judge Bench. *Anjuman-e-Rahmaniya* (supra) concerned an institution founded in 1938 and registered under the Societies Registration Act, 1860 in 1940. A two Judge Bench found that the case raised questions as to whether an institution established mainly by a minority, but with participation from members of other communities, could claim the protection of Article 30(1), and whether subsequent registration as a society altered its minority character. Since certain observations in *Azeez Basha* (supra) bore upon these questions and its correctness had also been doubted, the Bench directed that the matter be placed before the Chief Justice for being heard by a Bench of at least seven Judges. The matter was thereafter tagged with *T.M.A. Pai Foundation v. State of Karnataka*[26] before an eleven Judge Bench, where a similar question on the indicia of a minority educational institution was framed, but left unanswered. The decision stated that a regular Bench would adjudicate the question. However, the regular Bench also disposed of the matter without answering the query[27].

15. When the question arose again in *Aligarh Muslim University v. Naresh Agarwal*[28], a three Judge Bench presided over by the Chief Justice noticed that *Anjuman-e-Rahmaniya* (supra) had already referred the correctness of *Azeez Basha* (supra) on the same issue to a seven Judge

[25] 1967 SCC OnLine SC 321
[26] (2002) 8 SCC 481
[27] *Shahal H. Musaliar v. Union of India*, 2003 SCC OnLine SC 1479
[28] (2020) 13 SCC 737

Bench, but no authoritative answer had yet been rendered. The three Judge Bench, therefore, directed that the matter be placed before a seven Judge Bench. It was in this backdrop that the majority in *Aligarh Muslim University* (supra) affirmed the ratio in *Dawoodi Bohra* (supra) and held as follows:

> *"**40.** In Central Board of Dawoodi Bohra Community, a Constitution Bench discussed the legal precepts which apply to orders of reference and reiterated the position of law as below*
>
> ***40.1.** Decisions of this Court rendered by a Bench of larger strength are binding on Benches of a less or equal strength;*
>
> ***40.2.** If a Bench of lower strength is doubtful about the correctness of a judgment delivered by a Bench of larger strength, it cannot disagree or dissent from the view taken by the larger Bench. In case of doubt, it can invite the attention of the Chief Justice of India to its opinion and request the Chief Justice to list the matter before a Bench, the strength of which is greater than that which delivered the judgment which has been doubted;*
>
> ***40.3.** The correctness of the view taken by any Bench can only be doubted by a Bench of equal strength. The matter will then be placed for hearing before a Bench of greater strength;*
>
> ***40.4.** There are two exceptions to the rules discussed above:*

(i) The discretion of the Chief Justice is not bound by the rules. As the master of the roster, the Chief Justice may list any case before any Bench of any strength;

(ii) Despite the rules discussed above, if a particular case has come up for hearing before a Bench of larger strength and that Bench is of the opinion that the judgment of the Bench of lower strength requires reconsideration or correction, or is otherwise doubtful of its correctness, it may dispense with the need for a reference in the terms described above or an order of the Chief Justice and hear the matter for reasons given by it.

41. *The position of law laid down in Central Board of Dawoodi Bohra Community is correct. The decisions of a larger Bench are binding precedent, and judicial discipline and propriety dictate that Benches of lower strength must adhere to such decisions. This will also avoid inconsistencies in the development of law. Questions concerning the correctness of judgments must ordinarily be referred only by a Bench which is equal in strength to the Bench whose judgment is doubted. We also agree with the two exceptions to this rule, as detailed by this Court in Central Board of Dawoodi Bohra Community. They must remain exceptions and not transmogrify into the rule itself."*

16. Interpreting the ratio in *Dawoodi Bohra* (supra) as aforesaid, the majority held that the reference in *Anjuman-e-Rahmaniya* (supra), while doubting but not dissenting from *Azeez Basha* (supra), a five Judge Bench decision, to the Chief Justice for constitution of a seven Judge Bench, fell within the permissible limits laid down in *Dawoodi Bohra* (supra), as explained in sub-para 40.2[29].

17. It may not be out of place to note that in *Aligarh Muslim University* (supra), the minority view did not doubt the ratio in *Dawoodi Bohra* (supra) but interpreted sub-para 40.2 differently. Kant, J. (as he then was)[30], and Sharma, J.[31], interpreted sub-para 40.2 to mean that a Bench of lesser strength, upon doubting the correctness of a decision rendered by a Bench of larger strength, could not request the Chief Justice to constitute a Bench larger than the Bench whose decision was doubted, unless the Chief Justice was himself a member of the referring Bench. Such Bench of lesser strength could only direct placing of the matter before the Chief Justice for appropriate directions. Datta, J.[32], understood sub-para 40.2 to mean that if a two Judge Bench doubts the correctness of a larger Bench decision, it may place the matter before the Chief Justice for constitution of a three Judge Bench, and the matter may thereafter move, if necessary, to Benches of progressively larger

[29] See Para 42
[30] See Paras 259-268
[31] See Paras 646-660
[32] See Paras 400-413

strength, but not directly to a Bench larger than the Bench whose decision is under doubt.

18. If the course by which the correctness of the ratio in *Bangalore Water Supply* (supra) came to be referred is traced, it becomes clear that a Bench of lesser strength (*Jai Bir* (5J)) expressed doubt as to that ratio and placed the matter before the Chief Justice for constituting a larger Bench for reconsideration of the decision in *Bangalore Water Supply* (supra)[33]. The Bench did not specify the strength of the suitable larger Bench and left it to the discretion of the Chief Justice, who correctly placed the matter, in the first instance, before a Bench of co-equal strength, namely, a seven Judge Bench. Thereafter, the seven Judge Bench, which included the Chief Justice himself, considered it appropriate that the matter be referred to a nine Judge Bench. The course thus adopted does not run counter to *Dawoodi Bohra* (supra), understood in terms of the majority opinion in *Aligarh Muslim University* (supra). Even tested in the minority view expressed by Kant, J., (as he then was) and Sharma, J., in *Aligarh Muslim University* (supra), the reference by the seven Judge bench presided over by the then Chief Justice to the present nine Judge bench cannot be faulted. The reference, having travelled from a three Judge bench to a five Judge bench to a seven Judge bench and ultimately the present nine Judge bench, is also in consonance with the other minority view expressed by Datta, J.

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[33] See Para 46

19. Given this situation, it would not be proper to decline to answer the reference at the threshold on account of the form or manner in which the matter came to be placed before this Bench. There is, in any event, a clear distinction between making a reference and answering one. A referring Bench only records why, in its view, the existing position of law may require reconsideration by a Bench of larger strength. The larger Bench is not bound by those reasons. It may accept them, reject them, or answer the issue on an altogether different footing. That inquiry belongs to the merits of the matter before the larger Bench.

DEFINITION OF INDUSTRY: PRE-BANGALORE MUSINGS

20. In light of the above discussion, I may now proceed to examine the ratio in *Bangalore Water Supply* (supra) on merits. That inquiry must begin, not with *Bangalore Water Supply* (supra) in isolation, but with the line of cases through which this Court grappled with the definition of industry and gradually identified the elements which later crystallised into the triple test.

21. Section 2(j) of the ID Act defines "industry" as follows:

> *"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"*

22. Historically, the statutory formulation of Section 2(j) of the ID Act may be traced to the definition contained in the 1911 Amendment of Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904 of Australia which defined "industry" in the following terms:

> *"Industry includes-*
>
> *(a) any business, trade, manufacture, undertaking, or calling of employers, on land or water;*
>
> *(b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees, on land or water; and*
>
> *(c) a branch of an industry and a group of industries"*

Consequently, this Court has consistently drawn inspiration from the observations of the highest Constitutional Court of Australia while determining the contours of Section 2(j) of the ID Act.

23. The first significant step in this interpretive discourse was *D.N. Banerji v. P.R. Mukherjee & Ors*[34], where the Court was faced with the question whether a municipality, while discharging its normal civic duties and not trade and business, could fall within the ambit of "industry". Rejecting a narrow understanding of "industry", Chandrasekhara Aiyar, J., construed Section 2(j) in light of the object of the ID Act, holding that the term could not be confined to profit-oriented trade or business,

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[34] (1952) 2 SCC 619

particularly when the separate use of undertaking and the latter part of the definition indicated a wider legislative reach covering the calling, service, employment, industrial occupation or avocation of workmen[35].

24. Relying on the decision of the Australian High Court in *Federated Municipal & Shire Council Employees' Union of Australia v. Melbourne Corporation*[36], the Bench held that profit motive or capital investment was not essential, and that the real test lay in the nature of the activity. Thus, if an activity would constitute an industry in the hands of a private person, it would not lose that character merely because it was carried on by a municipality without profit motive. What mattered was whether the activity involved systematic cooperation between employer and employees for the satisfaction of human wants, in a manner analogous to trade or business[37].

25. The principle that the nature of the activity must prevail over the character of the body performing it was carried further in *Corporation of the City of Nagpur v. Its Employees*[38], where Subba Rao, J., examined whether the activities of the Nagpur Corporation (including departments like tax collection etc.) fell within the definition of "industry". The Bench declined to apply the rule of *noscitur a sociis* to narrow the definition, holding that the legislative intention of preserving industrial peace mandated a broader construction. It further held that the definition was

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[35] See Paras 13-17
[36] (1918) 26 CLR 508
[37] See Paras 23-26
[38] 1960 SCC OnLine SC 45

in two parts and both parts should be read independently. Its first part viewed industry from the standpoint of the employer, while the latter part from the standpoint of an employee. If an activity answered either part, it fell within the definition[39]. To deal with situations where the same municipal body or department discharged multiple functions, some industrial and others non-industrial, the Bench evolved the "predominant nature test", under which the undertaking was to be viewed as an integrated whole and classified according to its dominant function[40].

26. In *State of Bombay v. Hospital Mazdoor Sabha*[41], the Bench was required to address whether hospitals could constitute an industry under Section 2(j). The Bench referred to the dual-chambered character of the definition industry and held that both parts of the definition contained wide expressions which amplified one another, calling for an expansive interpretation, as opposed to a restrictive one[42]. The Bench emphasised that the inquiry turned on the nature of the activity, not the presence of profit, capital investment, or a strict commercial form[43]. Holding so, it proceeded to give an in-principle definition of the term undertaking to include (I) any activity systematically or habitually undertaken (II) with the co-operation of the employer and employees (III) for the production

[39] See Paras 9-10 & 13-18
[40] See Paras 16-18
[41] 1960 SCC OnLine SC 44
[42] See Paras 8-11
[43] See Para 11 & 13

or distribution of goods or for rendering of material services to the community for the satisfaction of human needs[44].

27. It is also relevant to bear in mind that after giving a working definition of industry in *Hospital Mazdoor Sabha* (supra), Gajendragadkar, J., drew a "*fair and just line*" exempting certain activities, namely, personal or domestic services and primary inalienable sovereign functions of the State, from the ken of industry[45]. In fact, the decision in *Hospital Mazdoor* (supra) sowed the seed that ultimately sprouted into the comprehensive definition of industry in *Bangalore Water Supply* (supra).

28. Soon after the pronouncement of *Hospital Mazdoor Sabha* (supra), the wide definition of industry was questioned and liberal professions[46], education[47] and private clubs[48] were carved out of its definitional orbit. This restrictive trajectory finally reached its zenith when the ratio in *Hospital Mazdoor* (supra) was referred to a six Judge Bench in *Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi*[49].

29. In *Safdarjung Hospital* (supra), the question was whether Government and charitable hospitals could be treated as industries merely because they were organised undertakings rendering services with the assistance

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[44] See Para 17
[45] See Para 12 & 14
[46] *National Union of Commercial Employees & Anr v. M.R. Meher, Industrial Tribunal, Bombay & Ors*, 1962 SCC OnLine SC 132, Paras 12-14
[47] *University of Delhi and Anr v. Ram Nath and Ors,* 1963 SCC OnLine SC 117, Paras 5-17.
[48] *Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club,* 1967 SCC OnLine SC 51, Para 19, 29-31; *Cricket Club of India Ltd. v. Bombay Labour Union,* 1968 SCC OnLine SC 132, Paras 4 & 7-10
[49] (1970) 1 SCC 735

of employees. Answering in the negative, the Bench dismantled the reasoning in *Hospital Mazdoor Sabha* (supra) which, according to it, had read two parts of the definition in Section 2(j) in isolation and not in an integrated manner as two counterparts of one industry. A workman could be regarded as employed in an industry only where his service was rendered in aid of an employer's undertaking which itself bore the character of trade, business, manufacture, undertaking or calling in the commercial sense.

30. The Bench further held that *Hospital Mazdoor Sabha* (supra) had misapplied the observations of Issacs and Rich, JJ., in *Melbourne Corporation* (supra) that the cooperation between capital and labour in producing goods or services for the satisfaction of human wants and desires would mean any activity where such goods or services were produced by a Government department or charitable institution since the same could be produced by a private person. As per *Safdarjung Hospital* (supra), this expression was used in *Melbourne Corporation* (supra) to merely distinguish the activities of the Government in industrial venture, though bereft of profit-making or absence of capital investments, and not to attribute the character of industrial activity to services undertaken by Government as public duties and even by individuals for charitable purposes[50].

[50] See Paras 24-25

31. It is against this background of doctrinal uncertainty that *Bangalore Water Supply* (supra) came to be decided. By then, the law under Section 2(j) had entered a difficult terrain. On one side stood *D.N. Banerji* (supra), *Corporation of the City of Nagpur* (supra), *Hospital Mazdoor Sabha* (supra), which had given the definition a broad and functional reach. On the other stood *National Union* (supra)[51], *University of Delhi* (supra)[52], *Madras Gymkhana Club* (supra)[53], *Cricket Club of India* (supra)[54], and finally *Safdarjung Hospital* (supra), which had sought to confine that reach by insisting upon an activity analogous to trade or business in a commercial sense. The task before the seven Judge Bench in *Bangalore Water Supply* (supra) was, therefore, to reconcile a body of precedent which had pulled the definition of industry in competing directions.

BANGALORE WATER SUPPLY – RATIO DECIDENDI

A. Opinion of Krishna Iyer, J.

32. Krishna Iyer, J., speaking for himself, Bhagwati and Desai, JJ., undertook that exercise by returning to the object and purpose of the ID Act, namely industrial peace and resolution of industrial disputes. The Hon'ble Judge opined that a narrow doctrinaire approach to fit the definition within the traditional frame of industry or business in a commercial sense would be a misfit for the ever-evolving activities of a

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[51] Excluded 'Liberal Professions'
[52] Excluded 'Educational Institutions'
[53] Excluded 'Self-serving Clubs'
[54] *Id*

diverse nature that cater to the growing needs of a welfare State, and would ultimately defeat the very object of the legislation itself. To achieve this end, Krishna Iyer, J., while endorsing the broad formulation in *Hospital Mazdoor Sabha* (supra) proceeded to give a more comprehensive working definition which would "*abolish blurred edges, illumine penumbral areas and over-rule what we regard as wrong*"[55]. In doing so, the Court expressly overruled the restrictive line of authority represented by *Safdarjung Hospital* (supra), *National Union* (supra), *University of Delhi* (supra), and *Madras Gymkhana Club* (supra). The comprehensive working definition so formulated by Krishna Iyer, J., commonly referred to as the "triple test", may be best expressed in his own words:

> *"**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.*

[55] See Paras 137-139

(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."

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 of 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."

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 of 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."

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 [University of Delhi v. Ram Nath], 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.*
>
> ***144.*** *We over-rule Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanrajgirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha is hereby rehabilitated."*

33. The central shift brought about by this formulation was that the expression analogous to trade or business was not to be searched for in the commercial object of the undertaking. The relevant resemblance lay in the manner in which the activity was carried on. An activity, though not trade or business in the ordinary sense, could still fall within Section 2(j) if it involved systematic activity organised through cooperation between employer and employee for the production or distribution of goods or services calculated to satisfy human wants and wishes. The analogy, therefore, was not in the motive which prompted the activity, nor in the destination of its output, but in the organisation of work and the relationship between labour and management. Once these elements were present, absence of profit motive, absence of a gainful objective, the public or private character of the venture, or the philanthropic object animating it, did not by itself take the activity outside the definition.

34. On this anvil, Krishna Iyer, J., rejected the cramped approach that had sought to place liberal professions, educational institutions, research

bodies, charitable establishments, clubs, and cooperatives beyond the purview of industries. The Court made it plain that no activity could claim exemption merely by virtue of its label. The focus must remain fixed on the nature of the activity itself. Therefore, the real question was whether the undertaking, in its actual working, satisfied the three elements identified by the Court. If it did, the institution could not claim immunity by invoking its purpose or description. If it did not, the statute would not apply merely because some persons were employed in its establishment.

35. At the same time, *Bangalore Water Supply* (supra) was equally conscious that industry could not be magnified to include casual or non-systematic activities. A simple venture would not become an industry where, substantially and by its dominant nature, it retained an unorganised or casual character and only a few employees were engaged. In liberal professions, Krishna Iyer, J., exempted individual professionals with marginal employee engagement in contradistinction to organised professional activity. Similarly, a pious or altruistic mission would not become an industry where those associated with it were themselves inspired by charity and served the cause free of remuneration, or for small honoraria, without being engaged on the basis of a master-servant relationship. In such cases, the presence of stray manual or technical staff was not decisive.

36. Krishna Iyer, J., then supplied the rule for composite undertakings through the dominant nature test, as explained in *Corporation of the City*

of Nagpur (supra). Where an undertaking consisted of several activities, some capable of exemption and others not, its character was not to be determined by breaking it into isolated departments or by treating incidental features as controlling. The true inquiry was into the predominant nature of the services rendered and the integrated character of the departments. If, so viewed, the undertaking bore an industrial character, it would fall within Section 2(j) as a whole, although persons who were not workmen within the meaning of the ID Act would not acquire that status merely because the undertaking was an industry.

37. The aforestated principle informed the treatment of Government departments. Sovereign functions, strictly understood, alone qualified for exemption, and not welfare activities or economic ventures undertaken by Government or statutory bodies. Even in a department discharging sovereign functions, a substantially severable unit bearing an industrial character could still be brought within Section 2(j). The formulation was also made subject to any constitutional or statutory provision[56] which, expressly or by necessary implication, removed particular categories from the operation of the ID Act.

38. The opinion of Krishna Iyer, J., however, was not the only voice in *Bangalore Water Supply* (supra). Beg, C.J., and Chandrachud, C.J., delivered separate opinions broadly agreeing with the ratio of Krishna Iyer, J., while Jaswant Singh, J., speaking for himself and Tulzapurkar,

[56] Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies (See Para 50)

J., partly dissented. It is therefore necessary to notice those opinions and the concurrences, qualifications and disagreements with the formulation enunciated by Krishna Iyer, J.

B. ***Concurring opinions of M.H. Beg, C.J., and Y.V. Chandrachud, C.J.***

(i) ***M.H. Beg, C.J.***[57]

39. Beg, C.J., expressly agreed with the reasoning and conclusions of Krishna Iyer, J., and held that, having regard to the preamble, legislative history, constitutional setting, and socio-economic conditions in which the ID Act operates, *noscitur a sociis* was not an appropriate tool for construing the term "industry".

40. In relation to Governmental activity, Beg, C.J. was clear that the mere presence of the State could not exclude the application of the ID Act, since the modern State had entered fields of industry, trade, public transport, public utilities and welfare services. Exclusion would arise only where constitutional provisions such as Articles 310 and 311, separate service rules, or special enactments displaced the general law expressly or by necessary implication. The same functional approach informed his treatment of liberal professions and charitable institutions. If the work of a lawyer or doctor assumed an organised and systematised form comparable to business or trade, employed several persons, and generated conditions in which disputes could arise between employer

[57] See Paras 146-169

and employees, it could fall within Section 2(j). Likewise, when services rendered by individuals arise out of missionary zeal and purely charitable motives, they would be excluded from the ambit of the ID Act.

(ii) Y.V. Chandrachud, C.J.[58]

41. Chandrachud, C.J., accepted the definition formulated by Krishna Iyer, J., *in toto*, but observed that, once Section 2(j) was found to employ words of deliberate width, the task of identifying what limitations should be read into it was a matter of policy, and where the language was clear, the definition had to be given the meaning its words conveyed, leaving no scope for judicially devised exceptions. The Hon'ble Judge saw little justification for excluding even inalienable sovereign functions once the nature of the activity bore an industrial character. If municipal water supply, sewerage and firefighting establishments could be industries, there was no reason why activities such as manufacture of coins and currency, arms and ammunition, or winning of oil and uranium should stand excluded merely because they were carried on by the State.

42. Similarly, for liberal professions, Chandrachud, C.J., rejected any broad immunity. The test of direct and proximate cooperation between employer and employee was, in his view, too uncertain, since assistants, managing clerks, librarians or typists may not produce the final intellectual product, but without their active assistance the professional establishment may not function effectively. The same approach governed

[58] See Paras 171-183

charitable enterprises and clubs. Charity, membership structure, self-serving character, or limited access to members and guests could not be decisive. The real inquiry was whether the activity was organised or arranged in the manner in which trade or business is normally organised.

C. ***Dissenting opinion of Jaswant Singh, J.*** [59]

43. Jaswant Singh, J., speaking for himself and Tulzapurkar, J., agreed with the dismissal of the appeal made by Bangalore Water Supply Board, but did not accept the wider formulation adopted by Krishna Iyer, J. In his view, Section 2(j) would be attracted only where the activity was systematically or habitually undertaken on commercial lines, with the cooperation of employees, for the production or distribution of goods or for rendering material services to the community or a section of it. This conclusion was reached by applying *noscitur a sociis*. The words in Section 2(j) had to take colour from their setting and from the associated expressions used in the definition.

44. Such an understanding had direct consequences for charitable and welfare institutions. Hospitals run on a charitable basis, or as part of the functions of Government, municipalities or local bodies, were not to be brought within the reach of Section 2(j). The same reasoning extended to educational and research institutions, whether run privately or by Government. Their object, structure and manner of functioning were

[59] See Paras 184-187

treated as insufficiently connected with activity undertaken on commercial lines for the production of goods or rendering of material services.

45. Liberal and learned professions were also placed outside the definition. The dissent treated professions such as those of doctors, lawyers and teachers as resting upon the individual's education, intellectual attainments and special expertise. In such cases, the work of the usual type of employees was considered too remote from the final service rendered to the client, patient or student. The end product could not, on this view, be treated as the result of industrial cooperation between the professional and his employees.

46. Krishna Iyer, J., in his principal opinion, had shifted the emphasis away from commercial analogy to the organised employer employee basis of the activity. However, the dissent insisted that Section 2(j) was not attracted unless the organised activity also bore the character of an undertaking carried on commercial lines.

47. Before proceeding further, it is imperative, at the very outset, to answer some arguments which were advanced to the effect that the opinions of Chandrachud, C.J., and Jaswant Singh, J., were delivered on a later date and Beg, C.J., did not have the benefit of going through the other two opinions. This is also one of the reasons for reference given in *Jai Bir* (5J) (supra). I am afraid that the retirement of Beg, C.J. before he could

peruse the deferred opinions does not affect the majority view or its binding effect.

48. Firstly, it is trite that when multiple opinions are handed down by a polyvocal Bench, the majority view binds the minority and constitutes the view of the Bench itself[60]. Secondly, the deferred opinion delivered by Chandrachud, C.J., concurs with the majority view. Even for argument's sake, if we were to assume that Beg, C.J. could have been persuaded by the minority opinion of Jaswant Singh, J., to alter his view, the opinion penned by Krishna Iyer, J., concurred in by Chandrachud, C.J., would nonetheless have remained the majority one.

LEGISLATIVE INTERVENTIONS POST BANGALORE WATER SUPPLY

49. Parliament, by the Industrial Disputes (Amendment) Act, 1982[61], amended the definition of "industry". The triple test was broadly retained to identify entities falling within the ambit of Section 2(j) of the ID Act, subject to exceptions enumerated therein. However, the 1982 Amendment Act was never brought into force.

50. The ID Act has since been repealed upon the coming into force of the IR Code, 2020[62], which defines "industry" under Section 2(p) in the following terms:

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[60] *Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi)*, (2024) 20 SCC 709, See Para 19
[61] Hereinafter "1982 Amendment Act"
[62] Enforced w.e.f. 21.11.2025, vide S.O. 5320(E)

> *“**p)** "industry" means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, —*
>
> *(i) any capital has been invested for the purpose of carrying on such activity; or*
>
> *(ii) such activity is carried on with a motive to make any gain or profit,*
> *but does not include —*
>
> *(i) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or*
>
> *(ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or*
>
> *(iii) any domestic service; or*
>
> *(iv) any other activity as may be notified by the Central Government”*

51. It is at this cusp of transition from the ID Act to a new industrial law regime that this Bench has assembled to answer the following questions:

> *"**(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."*

ANALYSIS

A. Formulation of the triple test and interpretation of 'Undertaking' with respect to 'Noscitur A Sociis' in Bangalore Water Supply

52. In the aftermath of the Second World War, industrial unrest had begun to intensify, and the limitations of the existing legal framework had become impossible to ignore. It was in these circumstances that the ID Act came to be enacted, with the preamble making its legislative purpose unmistakably clear:

> *"An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes"*

53. The ID Act pursues this preambular object through a negotiated balance between the interests of labour, capital, and the State, ensuring that productivity is never chased in oblivion of the rights of workers. Though the ID Act preceded the Constitution, its welfare-oriented scheme reflects the social philosophy which the Constitution later institutionalised. Article 38 requires the State to secure a social order informed by political, economic and social justice, and to minimise inequalities in status, income and opportunity. Article 39 carries that commitment into the economic sphere by directing the State to ensure adequate means of livelihood and prevent concentration of wealth to the common detriment. Article 43 completes that vision by contemplating living wages, humane conditions of work and a decent standard of life for all workers. These directives ought to be read harmoniously with the fundamental rights to equality and human dignity, collectively embodying the constitutional promise that each individual is entitled to a dignified life rather than a mere animal existence. This acknowledgement while binding the State to

a particular economic philosophy[63], seeks a fine balance between the individuals' pursuit of higher productivity and wealth and the rights of employees to a fair and humane life, including effective access to justice through a responsive grievance redressal mechanism. Any interpretation of the ID Act must remain profoundly conscious of the reality that true industrial efficacy emanates from industrial peace, not from trampling the rights of a key stakeholder.

54. The salient features of the ID Act are as follows:

   i) It establishes a structured institutional framework comprising Works Committees[64], Conciliation Officers[65], Boards of Conciliation[66], Courts of Inquiry[67], Labour Courts[68], Industrial Tribunals[69] and National Tribunals[70] for the investigation and settlement of industrial disputes

   ii) It empowers the appropriate Government to refer industrial disputes for adjudication[71], while also permitting the parties to submit disputes to voluntary arbitration[72]

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[63] See *Property Owners Association & Ors v. State of Maharashtra & Ors*, (2024) 18 SCC 1
[64] Section 3, ID Act
[65] Section 4, ID Act
[66] Section 5, ID Act
[67] Section 6, ID Act
[68] Section 7, ID Act
[69] Section 7-A, ID Act
[70] Section 7-B, ID Act
[71] Section 10, ID Act
[72] Section 10-A, ID Act

iii) It regulates strikes and lock-outs, particularly in public utility services[73], and prohibits their commencement or continuance during specified stages of conciliation, arbitration and adjudicatory proceedings[74]

iv) It enables the appropriate Government to declare specified industries or services as public utility services where uninterrupted operation is necessary in the public interest[75]

v) It prescribes substantive and procedural safeguards governing lay-off, retrenchment, transfer and closure of undertakings, including requirements of notice, compensation and, in specified cases, prior Governmental permission[76]

vi) It accords binding force to settlements and adjudicatory awards upon the parties and other persons covered by the statute[77], and regulates the period for which such settlements and awards remain operative[78]

vii) It protects workmen against punitive or prejudicial action during the pendency of industrial proceedings[79] and empowers adjudicatory authorities to examine the legality and proportionality of discharge or dismissal[80]

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[73] Section 22, ID Act
[74] Section 23, ID Act
[75] Section 2(n)(vi), ID Act
[76] Chapter VA, ID Act
[77] Section 18, ID Act
[78] Section 19, ID Act
[79] Section 33, ID Act
[80] Section 11-A, ID Act

55. The ID Act achieves its purpose and ensures access to justice by providing a remedial framework that is far more efficacious, specialised, and socially responsive for resolution of industrial conflict and preservation of industrial peace than the labyrinth of ordinary civil law remedies, which a workman can ill-afford[81]. Section 2(s) of the ID Act defines 'workman' as follows:

> *"'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..."*

56. Only an individual who classifies as a 'workman' engaged in an 'industry' in case of an 'industrial dispute'[82] can seek refuge under the protective garb of the ID Act and avail the unique remedies contemplated therein such as reinstatement, back-wages, regularisation, retrenchment

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[81] *Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad*, (2002) 2 SCC 542 (See Paras 5-6)

[82] As defined in Section 2(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

compensation and collective settlements[83]. These stand in marked contrast with civil remedies, which move through the slower, adversarial grammar of private litigation. As correctly pointed out by Ms. Jaising, the 'security of tenure' guised as reinstatement under Section 11A of the ID Act has no true equivalent in ordinary civil law. By virtue of this provision, the Labour Courts can not only examine whether a dismissal is unfair or disproportionate but also, where necessary, direct reinstatement or substitute the punishment imposed with a lesser penalty. On the contrary, an ordinary Civil Court, constrained by the traditional common law conception of "master and servant", may at best award damages for wrongful termination. Constitutional remedies, too, cannot always serve as an adequate substitute, particularly where industrial conflicts involve disputed questions of fact.

57. Perhaps, the greatest achievement of the ID Act is in instilling a spirit of dialogue that starts at the workplace itself, through works committees[84], conciliation officers[85], and boards of conciliation[86], all intended to prevent industrial tensions from crystallising into open conflict. At the heart of this architecture lies collective bargaining, through which the otherwise scant bargaining power of an individual workman is strengthened by the representative voice of the union, and disputes concerning conditions of employment are resolved by agreement rather

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[83] S. 11 & 11A, ID Act (Also see Chapter VA & VB, ID Act)
[84] S.3, ID Act
[85] S.4 & 12, ID Act
[86] S.5 & 13, ID Act

than coercion. Industrial democracy is the bedrock of the ID Act, with the individual workman receding into the background and the union espousing the common cause of the body of workmen.

58. Section 18 of the ID Act gives legal effect to voluntary collective bargaining by recognising settlements arrived at both within and outside conciliation proceedings. While a settlement arrived at otherwise than in the course of conciliation binds the parties to the agreement under Section 18(1), a settlement reached during conciliation is accorded an extended binding force under Section 18(3), encompassing not merely the immediate parties but all persons and workmen statutorily connected with the industrial dispute.

59. Even if matters reach the stage of adjudication in a courtroom, disputes are entrusted to Labour Courts[87] and Industrial Tribunals[88] possessing the requisite subject-matter expertise. The pro-welfare approach of the ID Act is further reinforced by the fact that post adjudication, if the workman is entitled to more favourable benefits under any other law, award, or contract of service than those already bestowed by the ID Act, he may avail the same[89].

60. The ID Act is not an ordinary commercial statute but a beneficial social legislation providing a complete code for resolution of industrial disputes. Its provisions must receive a purposive construction that advances the

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[87] S.7, ID Act
[88] S.10, ID Act
[89] Proviso to S. 25J, ID Act

remedy[90] and sustains the object of the larger legislative scheme[91]. To ensure that the ID Act baulks a restrictive definition of industry or industrial disputes, *Bangalore Water Supply* (supra) while approving the wide and inclusive interpretation adopted in *D.N. Banerji* (supra)[92], *Corporation of the City of Nagpur* (supra)[93] and *Hospital Mazdoor Sabha* (supra)[94], rejected the associational shrinkage of the term undertaking to a mere synonym of trade and business in the commercial sense.

61. Ld. Amicus, Mr. Cama, disputes such an expansive construction and contends that the legislature, by employing the expression "means" in Section 2(j), intended to provide an exhaustive definition confined only to activities answering a narrow commercial understanding of trade or business. Relying on the interpretation adopted in *Safdarjung Hospital* (supra), he further submits that unless an undertaking satisfies the commercial requirements contained in the first exhaustive part of Section 2(j), the latter part of the definition cannot be invoked.

62. I am unable to accept the interpretation canvassed by Mr. Cama, for the following reasons. *Firstly*, the definition clause, comprises two limbs. The first limb, though prefaced by the word "means" which ordinarily denotes an exhaustive definition, must be read holistically with the second limb which is couched in wide and inclusive terms. The usage of the word

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[90] *Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.*, (2004) 1 SCC 702, See Paras 23-25 & 27

[91] *National Insurance Co. Ltd. v. Laxmi Narain Dhut*, (2007) 3 SCC 700, See Paras 27, 28, 30 & 33; *Poppatlal Shah v. State of Madras*, (1953) 1 SCC 492, See Para 9

[92] See Paras 13-17

[93] See Para 18

[94] See Para 10

"includes" followed by expressions of wide import such as calling, service, handicraft and industrial occupation and avocation of workmen in the second limb of the definition industry, indicates that the legislature did not intend the definition to remain confined within rigid or exhaustive limits of the first limb. Rather, it widened the scope of the expression so as to bring within its fold matters which may not be expressly enumerated in the definition clause. Read in this manner, the structure of Section 2(j) itself resists the restrictive interpretation advanced by Mr. Cama.

63. *Secondly,* Mr. Cama's argument that the two limbs of the word industry must be read conjunctively, i.e., an activity would fall within the definition of industry when it satisfies the exhaustive test qua the employer irrespective of the inclusive definition qua the employee, even if accepted, would not justify a restrictive reading of the first limb of the definition. The first limb of the definition itself employs expressions of considerable breadth. The term "undertaking", for instance, though undefined under the ID Act, is defined in the Oxford Dictionary[95] as follows:

> *"A task or project, especially one that is important and/or difficult"*

[95] *Oxford Advanced Learner's Dictionary* (2005) 7th Edn, Oxford University Press 1667

Hence, in common parlance, the term is not restricted to trade and commerce alone and may include any activity. Equally expansive is the term "calling". The dictionary meanings of the term read thus:

> *"A strong desire or feeling of duty to do a particular job, especially one in which you help other people; a profession or career."*[96]
>
> *"Carrying on a school is calling; the profession of teaching is a calling."*[97]

The lexical import of calling makes it clear that the expression carries an exceptionally broad sweep, which can be extended to diverse fields such as professions, spiritual pursuits, education and charitable activities. Thus, even in their ordinary and everyday sense, these expressions travel far beyond the narrow world of commerce and profit. It is for this very reason that this Court in *D.N. Banerji* (supra), *Corporation of the City of Nagpur* (supra) and *Hospital Mazdoor Sabha* (supra) recognised the inherently wide import of the term "undertaking". To confine such wide words within a commercial window would be to lose sight of the very object for which industrial law came into being.

64. Finally, the ID Act essentially deals with the terms of organised engagement between employer and employee for the production of goods and services that satisfy human wants and needs. Whether such goods

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[96] *Id*

[97] Greenberg D (ed), *Stroud's Judicial Dictionary of Words and Phrases* (8th edn, Sweet & Maxwell 2012)

or services (having material worth) are consumed on commercial or altruistic lines does not affect the relationship between the employer and employee engaged in bringing them into existence. The 'heart and soul' of the definition lies in this structured cooperation, and not in the profit motive or commercial character of the undertaking. The expression analogous to trade or business used in earlier judgments, starting from *D.N. Banerji* (supra), must necessarily mean any activity whose 'systematic and organised' cooperation between employer and employee is akin to trade and commerce. Viewed thus, Mr. Cama's argument, premised on *Safdarjung Hospital* (supra), that the expression industry must be confined to activities pursued for a commercial purpose, does not warrant acceptance. Krishna Iyer, J., by correctly shifting the focus from profit/business motive to the nature of the activity, has developed a formulation that wholly aligns with the object of the ID Act. In doing so, the definition rightly makes room for exclusion of casual, sporadic and unorganised activities, such as domestic service, small informal associations of persons, or individual professional practice, in contradistinction to social clubs or firms of professionals which are established and run systematically through an organised employer employee structure.

65. Petitioners have further argued that the expressions "business", "trade", "undertaking", "manufacture" and "calling" occurring in Section 2(j) must be interpreted in light of the maxim *Noscitur a Sociis*, under which associated words derive colour and meaning from one another. According

to them, the word "undertaking", being placed alongside "business" and "trade", cannot be construed in isolation so as to include every organised activity, but must be confined to undertakings bearing a commercial character.

66. The principle of *Noscitur a Sociis* stipulates that words derive meaning from the company they keep[98]. When words susceptible of analogous meanings are grouped together, the more general expression may legitimately draw colour from the narrower expressions surrounding it and may thus be confined to a cognate sense. However, this Court in *D.N. Banerji*[99] (supra), *Corporation of the City of Nagpur*[100] (supra) and *Hospital Mazdoor Sabha*[101] (supra) had declined to apply *Noscitur a Sociis* for confining the word "undertaking" only to commercial or profit-oriented activities. The prevailing understanding was that the wider phraseology of Section 2(j) was consciously adopted to ensure that the definition remained sufficiently broad to respond to the changing realities of organised industrial activity and the larger objective of preserving industrial peace in a welfare State. In *Bangalore Water Supply* (supra), the opinions of Beg, C.J.[102], and Chandrachud, C.J.[103], echoed the same sentiment and did not apply *Noscitur a Sociis* as an interpretive tool to read down the width of Section 2(j). Per contra, the partly dissenting

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[98] Maxwell, *Interpretation of Statutes*, 11th edn, p. 321
[99] See Para 17
[100] See Paras 9-10
[101] See Para 13
[102] See Paras 147-169
[103] See Paras 170-183

opinion of Jaswant Singh, J., departed from this line of reasoning and applied *Noscitur a Sociis* in a far more restrictive sense so as to curtail the ambit of industry to activities bearing a distinctly commercial character.

67. It is relevant to note that Krishna Iyer, J., does not outrightly reject the application of *Noscitur a Sociis*, but adopts a far more nuanced stance. The Hon'ble Judge accepted that the expression undertaking must indeed "*suffer a contextual and associational shrinkage*" and should derive colour from the surrounding expressions like trade and business[104], which are to be understood as systematic activities producing goods and services through organised cooperation between employer and employee. But while invoking *Noscitur a Sociis*, the relevant enquiry was still anchored on the nature of activity and not the commercial motive of the employer. Therefore, if an undertaking answered the functional formulation of the triple test, it would be deemed to be analogous to trade or business and consequently, an industry.

68. The ratio in *Bangalore Water Supply* (supra), whether viewed through the approach of Beg, C.J., and Chandrachud, C.J., who declined to apply *Noscitur a Sociis* to define 'undertaking' in a restrictive manner, or through the more textured understanding adopted by Krishna Iyer, J., advances the object of the Act far more effectively than the narrow construction favoured by Jaswant Singh, J., which proceeds on the

[104] See Para 13

assumption that undertaking must derive a purely commercial colour from the accompanying terms trade and business. *Noscitur a sociis*, being a tool of purposive interpretation, cannot be applied in a manner that defeats the very purpose of the legislation.

69. One must always bear in mind that a workman seldom enters the field of negotiation as an equal. Across the table, often stands an employer larger than him in every conceivable sense, armed with greater resources and bargaining strength. The ID Act attempts to soften that imbalance. It gives the solitary worker a language through which he may collectively speak, and a one-stop forum before which his grievance is effectively remedied. The legislation seeks to ensure that industrial relations do not harden into a landscape where unequal bargaining power alone determines outcomes. It was with this larger constitutional and social vision in mind that Krishna Iyer, J., formulated the triple test in *Bangalore Water Supply* (supra). The test was never intended to erase all limits upon the definition of "industry", but to preserve industrial peace through civilised dialogue and prompt adjudication wherever organised human effort and labour converge in a form capable of generating claims, demands, tensions and stress.

70. In light of such discussion, I hold that the test laid down in paragraphs 140 to 144 in the opinion rendered by Krishna Iyer, J., in *Bangalore Water Supply* to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law. Having affirmed the

triple test, the next stage of analysis would be its application vis-à-vis the different categories of activity, starting with sovereign functions.

B. ***<u>Do sovereign functions include 'welfare activities'?</u>***

71. Sovereign functions are not excluded by any express words in Section 2(j) of the ID Act. The exclusion has been recognised by judicial interpretation, because certain functions of the State are so closely tied to its core identity that they cannot be treated as ordinary industrial activity. The danger lies in allowing a narrow exception, meant for truly inalienable functions of the State, to expand into a general protection for every activity undertaken by the Government.

72. Traditionally, sovereign was understood as regal, that is, the King. From this perspective, Crown functions which cannot be delegated were understood as 'sovereign'. In a constitutional democracy, sovereign powers vest in the people and the State exercises them as a representative of the 'will of the people'. That is to say, the State is answerable to none but the people while exercising sovereign powers. Unlike statutory or even constitutional powers where the State is amenable to judicial review, in exercise of sovereign powers, the State as the representative of *vox populi* is only answerable to the *populus* in the political-democratic domain. The task is to then isolate that narrow inalienable and non-justiciable field of activities without letting sovereignty become a convenient shield for every public, statutory, or

welfare-oriented enterprise, and the cue for resolving this quandary lies in the opinion of this Court in *N. Nagendra Rao & Co. v. State of A.P.*[105].

73. Although born within the law of torts, the decision in *Nagendra Rao* (supra) serves as a vital compass for defining the modern content of inalienable sovereign functions. Writing for the Court, Sahai, J., held that only when a State was carrying on activities which are politically and jurisprudentially categorised as pure acts of State did they remain insulated from the jurisdiction of ordinary Civil Courts. A citizen cannot sue the Government for negligence in making a law or for policy decisions, because in this exclusive sphere, the jurisdiction of the Courts is impliedly barred as a matter of public interest. *Nagendra Rao* (supra) also sounds a profound caution by declaring that the immunity of the State terminates precisely where this narrow sovereign core ends[106].

74. The judgment in *Chief Conservator* (supra) serves as the vital bridge carrying the principles of *Nagendra Rao* (supra) directly into the specific terrain of industrial jurisprudence. When the State sought to extend the protective guard of sovereignty over the entire Forest Department, the three judge Bench drawing inspiration from *Nagendra Rao* (supra) confirmed that the sovereign shell covers only those core functions "which are indicative of external sovereignty and are political in nature"[107]. For these activities, the State is fundamentally not

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[105] (1994) 6 SCC 205
[106] See Paras 23-25
[107] See Para 12

answerable in an ordinary Court of law. Because this sovereign core is so uniquely confined, the vast expanse of the State’s welfare activities irrespective of their public utilitarian import cannot fall within the immunized sovereign core.

75. Various public duties may be vested in the State through primary legislation or even under the Constitution. These statutory or constitutional duties, even those undertaken to achieve the lofty ideals of Part IV, do not, merely by the strength of their public character or welfare nature, constitute sovereign functions, unless such functions form the core of a nation's sovereign existence. Such reasoning draws a clear distinction between the inalienable sovereign powers of a nation, in exercise of which the State is answerable to the people, and its constitutional and statutory duties, including welfare activities, where the State is amenable to judicial review under the constitutional scheme. Importing such a narrow sovereign exception while testing whether a Governmental activity constitutes an industry fits well with the purposive interpretation of the ID Act, furthering its objective of ensuring industrial peace and the seamless adjudication of industrial disputes in all conceivable spheres of Governmental activity, welfare or otherwise. Even within the core sovereign area, *Bangalore Water Supply* (supra) was right to hive off substantial severable units that operate as industries under the law.

76. In such view of the matter, there is no wrong in saying that the contours of sovereignty have steadily contracted as the modern State has moved

from command to service, from prerogative to responsibility, and from a distant ruler to an everyday employer, regulator and provider. Two working tests may be invoked for locating that narrow sovereign core. The first is the test of non-justiciability and absolute immunity articulated in *Nagendra Rao* (supra) and applied to industrial law by *Chief Conservator* (supra), which looks at whether the state's action is purely political and completely insulated from the scrutiny of ordinary Civil Courts. The second is the private person test/inalienability test, which runs through *D.N. Banerji* (supra), *Nagpur Corporation* (supra), *Hospital Mazdoor Sabha* (supra), and *Agricultural Produce Market Committee* (supra). If the activity is of a kind that private persons or non-State agencies may perform, it cannot be described as essentially and inalienably sovereign in the strict sense, for such a function is one which is inseparable from the State and can be performed only by the State.

77. These tests point towards a restricted domain comprising functions such as defence, foreign affairs, war and peace, treaty making, legislation, taxation, eminent domain, core police power, justice, maintenance of law and order, internal and external security, repression of crime and grant of pardon. Even while indicating these categories, caution is necessary. The boundaries of sovereignty cannot be fixed by yesterday's assumptions. Frédéric Mégret, writing on "inherently sovereign functions"[108] traces how power once concentrated in the State has, in

[108] Frédéric Mégret, *Are There "Inherently Sovereign Functions" in International Law?,* American Journal of International Law, Volume 115, Issue 3, July 2021, pp. 452 - 492

modern times, been steadily unbundled into private hands, with privatisation reaching areas once instinctively associated with sovereignty, including policing, military activity, intelligence, prisons and border control.

78. Therefore, ordinary administrative, developmental or welfare activities of the State cannot, by any automatic rule, be treated as naturally immune. The question must always be whether the function is so bound to the constitutional personality of the State that it cannot be alienated, delegated, or made answerable in the ordinary course of civil adjudication or constitutional torts. Everything outside that small chamber must return to the discipline of Section 2(j).

79. Mr. Nataraj, ASG, attacks this premise by arguing that while *Bangalore Water Supply* (supra) purports to exclude primary and inalienable functions, it fails to provide a workable methodology for identifying them amid contemporary governance. He contends that the realities of the modern state involve deep layers of delegation, outsourcing, and incidental assistance, warning that reading inalienability with literal rigidity would inevitably reduce the sovereign exception to a vanishing point. Mr. Sanjay Hegde elevates this critique by submitting that in an Indian welfare setting, the focus must shift away from a narrow preoccupation with alienability, arguing instead that the Court must weigh the source of power, the gravity of constitutional obligations, and the breadth of public purpose. Taking a more cautious stance, Mr. Venkataramani, Attorney General, submits that the concept cannot be

frozen into a static catalogue and suggests that the executive remains better situated to determine what possesses a sovereign character in any given context.

80. These contentions undoubtedly identify a genuine operational complexity, because the category of sovereign functions cannot be reduced to a rudimentary checklist sealed for all time. However, the remedy for a fluid and evolving role of a welfare State cannot be to make sovereignty co-extensive with every statutory duty or constitutional aspiration. Environmental protection, irrigation, sanitation, hospitals, and public utilities may all be matters of deep constitutional importance, but the test remains whether the function belongs to the core, non-justiciable authority of the State. While primary inalienable political actions stand outside the ID Act, organised Government enterprises rendering public services, implementing schemes or pursuing welfare objectives through employees cannot be excluded merely because the work carries a public purpose or a constitutional duty. As correctly submitted by the Respondents, to dilute the decision of this Court in *Bangalore Water Supply* (supra) would be to create a large and unprincipled exemption for Government departments, unless such activities are governed by special laws which substitute for the ID Act by providing equally effective and efficacious remedies in the arena of employer employee disputes.

81. A careful reading of the post *Bangalore Water Supply* (supra) decisions shows that this Court has not permitted Government departments or

statutory bodies to claim immunity merely by invoking public character. In *Des Raj v. State of Punjab*[109], the Irrigation Department was held to fall within Section 2(j) on the application of the dominant nature test, and this position was later reaffirmed in *Agricultural Produce Market Committee v. Ashok Harikuni*[110], where this Court held that statutory creation, regulatory powers and levy of fees do not, by themselves, confer sovereign character on the market committee. The reliance placed by the Petitioners on *State of Madhya Pradesh v. Somdutt Sharma*[111], does not carry the matter further, since that case concerned the narrower question whether the Irrigation Department was a "factory" for the purposes of Chapter VB, and not whether it was an "industry" under Section 2(j). A department may not be a factory but could yet be an industry. Likewise, *General Manager, Telecom v. A. Srinivasa Rao*[112], restored the binding force of *Bangalore Water Supply* (supra) by overruling *Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph*[113] and *Bombay Telephone Canteen Employees' Association, Prabhadevi v. Union of India*[114], to the extent they had treated postal and telecommunication functions as part of the inalienable sovereign core. These decisions serve as a persistent reminder that the promise of industrial justice must remain accessible to all those who labour within the vast and varied machinery of the welfare State.

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[109] 1988 SCC OnLine SC 141
[110] (2000) 8 SCC 61
[111] (2021) 12 SCC 53
[112] (1997) 8 SCC 767
[113] (1996) 8 SCC 489
[114] (1997) 6 SCC 723

82. Ld. Amicus Mr. Partha Sarathi rightly reminds us that the legislature has left numerous footprints of its intent to bring State entities within the statutory fold. For example, Section 2(a) specifically contemplates industries carried on by or under the authority of the Central Government and Section 2(n), read with the First Schedule, explicitly weaves railways, major ports, defence establishments, and hospitals into the framework of public utility services.

83. *Safdarjung Hospital* (supra) noticed this scheme of public utility services but read it through the wrong lens. It held that an entry in the First Schedule does not itself make an activity an industry, and that the activity must first answer the test of “industry” before it can be declared a public utility service. The error lay in the test it applied. By insisting that the activity must be analogous to trade or business in a commercial sense, *Safdarjung Hospital* (supra) drained the First Schedule of its real significance. Once that commercial approach is rejected, as it must be, the inclusion of hospitals, defence establishments, fire brigade services, railways, ports and similar services shows that Parliament did not regard public or statutory character, Governmental control, absence of profit, or welfare purpose as reasons for exclusion. The statutory scheme treats such services not as strangers to industrial law, but as sensitive sectors requiring special regulation.

84. This legislative design carries its own safeguard. Having drawn public utility services into the ID Act, Parliament did not leave their regulation

unguarded. The ID Act itself subjects such services to a stricter discipline, requiring under Section 22 advance notice of any strike or lock-out and a mandatory cooling-off period before industrial action may commence, over and above the general restrictions in Section 23 that operate during conciliation, adjudication and arbitration across all industrial establishments. Where even this is found wanting, the Essential Services Maintenance Act, 1981 furnishes a further and more direct safeguard, empowering the appropriate Government to prohibit strikes in services it notifies as essential, so that the continuity of vital services is preserved without disturbing their underlying character as industries. The norm, therefore, is to treat these public utility services as industries under the ID Act. Relief from the ordinary incidents of industrial action is the exception, available only where the public interest so demands, and even then, it operates not by removing these services from the ID Act but by regulating the exercise of industrial action through the safeguards the law itself provides and the procedure it prescribes.

85. The repercussions of a contrary view are far from academic and they strike most heavily at those on the lowest rungs of public employment. Many of these workers endure severe occupational hazards and social vulnerability, yet a blanket exclusion of Government departments would mean that the very people who most require the protection of the law are the first to be denied it. It would be a profound irony if a doctrine intended to safeguard the State is used to unprotect labour. This also offends the equality principle enshrined in Article 14, for a gardener,

driver, or maintenance employee does not perform a different species of labour simply because their wage slip bears the seal of the State.

86. It is not a sufficient answer to suggest that Government employees are protected elsewhere by Articles 309 to 311 of the Constitution, as those provisions protect only those who hold civil posts and do not cover the vast army of daily wagers, casual workers, or contractual employees. Service rules, where they exist, do not occupy the same field as the ID Act, which provides a forum for conciliation, adjudication, protection against retrenchment, regulation of changes in service conditions, and scrutiny of unfair labour practices. To remove that field through an enlarged idea of sovereignty is not to preserve governance, but to close the statutory door on those who were meant to enter through it.

87. The apprehension of the Petitioners that the application of the ID Act will burden Government departments with litigation is also overstated, for the Act is not a hindrance to good administration, but a framework for redressing industrial conflict and ensuring industrial peace. Bringing an organised Government activity within the ID Act is a method of preserving order within administration, as public governance becomes more arbitrary, not stronger, when workers are pushed outside remedies. In *Bhola Nath v. State of Jharkhand*[115], this Court held that the State, as a model employer, bears a heightened obligation to act with fairness, dignity and constitutional responsibility towards those who serve it.

[115] 2026 SCC OnLine SC 129

Therefore, if the State organises labour and accepts the fruit of that work, it should not be eager to retreat into the sanctuary of sovereignty the moment statutory rights are asserted. A State which claims to be a model employer cannot wear the Crown when the worker asks for a remedy.

88. For these reasons, treatment of sovereign functions by Krishna Iyer, J., in *Bangalore Water Supply* (supra) calls for affirmation as a principled adjustment between State authority and State accountability. It leaves untouched the inalienable core of Government, but refuses to allow welfare, service and organised administration to be withdrawn from Section 2(j) merely by invoking public purpose. To side with the Petitioners would invariably convert sovereignty from a narrow inalienable core function into a convenient escape from labour law. That course must necessarily be rejected.

89. *Narsinh Parmar* (supra) runs counter to the ratio in *Bangalore Water Supply* (supra) and is not good law insofar as it casts a procedural burden on a workman to claim relief under the ID Act against a blanket presumption of sovereign immunity for all Government departments. This view is wholly erroneous as it traces sovereignty to the structure, i.e., to the State and not to the nature of the activity, i.e., which inalienable functions are accountable solely through democratic processes. To allow a general presumptive bias regarding the sovereign character of Government departments to become a governing rule would be to place a mask of immunity upon the State at the very threshold of litigation. This would effectively require the workman to break through a

wall of State privilege before the actual organisation of work is ever examined.

C. ***Charitable Undertakings***

90. In *Bangalore Water Supply* (supra), Krishna Iyer, J., identified three categories of charitable enterprises. The first comprises enterprises that earn profits in the ordinary course but divert the whole or a substantial part of such profits to altruistic objects. The second comprises institutions that make no profit but employ workers on ordinary economic terms to produce or supply goods and services that are made available, at low or no cost, to those who cannot afford them. The third comprises establishments oriented towards a humane mission, where persons work not for wages but out of shared devotion to the cause, such as ashrams or spiritual orders. The Court held that the first two categories are industries, since in both cases there exists a systemic and organised cooperation between employer and employee, and the destination of the profits or the presence of a charitable object makes no difference to that relationship. The third category alone falls outside the definition, not because of any charitable character, but because no economic relationship of employer and employee, as ordinarily understood, exists at all[116].

91. The aforesaid classification is reasonable and has a rational nexus with the object of the ID Act. What is decisive under the Act is the nature of

[116] See Paras 102-111

the relationship between the institution and those it employs to carry out its activity. So long as that relationship bears the hallmarks of ordinary employment, wages paid for work done, and an organised, systematic cooperation between employer and employee, the institution falls within the definition of industry, regardless of whether its object is charitable or its surplus is devoted entirely to public good. So far as the workman is concerned, it matters little whether the products of his labour are made available to the poor free of charge, for he contributes his labour in return for wages and conditions of service exactly as he would for any commercial employer. The fallacy in contending otherwise lies in shifting the focus from the worker and the industrial activity to the disposal of the end product, a consideration with which the ID Act has nothing to do.[117] It is only where an employer-employee relationship is absent and both the stakeholders combine in an altruistic manner to produce goods and services for charity, as in the third category identified in *Bangalore Water Supply* (supra), that the institution escapes the definition, and even then, the exclusion rests on the nature of employment itself being on charitable lines and not on the charitable nature of the enterprise.

92. One may be tempted to argue, at this stage, that charitable institutions ought to be accorded the same exemption under the ID Act as they are under other statutes, such as the Income Tax Act[118]. This argument, however, proceeds on a flawed equation of two enquiries that serve

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[117] See Para 107
[118] Sections 11 to 13, The Income Tax Act, 1961

entirely different purposes. The Income Tax Act brings profits and gains to tax, and exemptions under Sections 11 to 13 thereof proceed on the footing that income applied towards charitable purposes such as relief of the poor, education or medical relief is not income retained for private gain and ought not to bear the same burden as commercial profit. The exclusion of charity from the rigours of that statute is for an enquiry into taxability and hence is necessarily an enquiry into the character of the income and the purpose to which it is applied. The ID Act, however, proceeds on an altogether different footing. Its object is not the taxation of income or the regulation of profit, but the resolution of industrial disputes and the maintenance of industrial peace between employers and employees. Viewed thus, the charitable or non-profit character of an institution, which is determinative of its treatment under the Income Tax Act, has no bearing whatsoever on the existence of an employer-employee relationship or on the organised cooperation between the two that the ID Act seeks to regulate.

D. __Temples__

93. Petitioners have argued that temples should be kept outside the rigours of the ID Act as their main function is wholly spiritual and religious in character, directed solely towards the satisfaction of the devotional needs of worshippers, and incapable of being bought and sold in any commercial market. It was further urged that the right to close down an undertaking is not applicable to temples and that application of

principles of industrial law to temples would disrupt the daily conduct of worship for thousands of devotees.

94. Such contention is wholly misguided. Similar to charitable institutions, the object and motive of the employer to establish a temple for religious and spiritual pursuits is not the correct parameter with regard to its inclusion or exemption from industrial law. As rightly pointed out by Krishna Iyer, J., it would amount to an unreasonable and hostile classification if employees engaged in the preparation of *ladoos* are treated differently with regard to adjudication of their disputes on the criterion whether such *ladoos* are sold for profit or offered as *prasadam* to a deity. Further, inapplicability of the closure clauses under the ID Act to a temple would give little solace to the cooks, sweepers and watchmen engaged by the temple administration when they are subjected to unfair labour practices, including retrenchment. Inapplicability of certain provisions of the Act due to the peculiar nature of the establishment cannot be a criterion to defeat the applicability of the statute itself.

E. ***Educational Institutions***

95. The absence of a profit motive, the vocational or charitable character of an activity, or the perceived social nobility of its object does not, by itself, remove an undertaking from the ambit of Section 2(j) of the ID Act. The inquiry must instead be directed towards the organised relationship between the institution and those engaged in carrying on its activities. It is this same focus on the character of the cooperation between employer

and employee that assumes significance in considering educational establishments. Educational institutions must not be judged from the relation between the undertaking and the consumers of their output, but from the nature of the relationship between the promoters or owners of such entity and their employees who directly or incidentally contribute to the production of such output. It is true educational institutions are established to impart knowledge and such activities are carried on by teachers who may not fall within the definition of "workman". Notwithstanding such character, these institutions also engage various other employees who fall within the definition and participate in organised systematic activity, directly or incidentally contributing to creation of services catering to human needs.

96. In *T.M.A. Pai Foundation* (supra)[119], an eleven Judge Bench construing Article 19(1)(g) held that education falls within the expression "occupation", even where no element of profit is involved, since the establishment and running of an educational institution employing teachers and administrative staff to impart knowledge to students is an activity undertaken as a means of livelihood or a mission in life. In reaching that conclusion, the Court gave "occupation" a wide connotation embracing a calling, trade or business. The significance of this lies in the vocabulary employed, for these are the very expressions used in the definition of "industry" under Section 2(j), which, as already discussed, carry an exceptionally broad sweep extending well beyond

[119] See Paras 20-25

commerce and profit. If education, though long regarded as charitable and never treated as a trade or business for profit, nonetheless answers the description of "occupation" for the purposes of Article 19(1)(g), there is no reason in principle why the systematic and organised activity of running an educational institution, contributed directly or incidentally, through an employer employee (who is a workman) relationship, should not equally answer the description of industry under Section 2(j).

F. Clubs

97. Most clubs, whether gentlemen's clubs, service clubs or sports clubs, when examined from the industrial angle, project a picture typical of employers hiring employees for wages to render services and supply goods on a systematic basis at specified hours, with the club management providing the capital, raw material and appliances while cooks, waiters, bell boys and other staff render the services for which members pay by way of subscriptions or bills. The character of a club being exclusive of members and their families or friends, and run through their contributions and services, does not change the organised and systemic nature of activity undertaken in producing goods and services which may be solely for the consumption of its own members. The relationship between such club members and staff engaged by them bears the hallmark of an organised systematic engagement akin to an employer employee relationship in a commercial enterprise amenable to the ID Act.

98. *Madras Gymkhana Club* (supra) incorrectly applied the exclusivity test thus excluding clubs and similar institutions from the ambit of industry. The only exception, as rightly pointed out by Krishna Iyer, J., in cases of such clubs or self-serving institutions would be small entities like casual association of persons where engagement of employees is marginal. Large clubs, organised on corporate lines, maintaining big establishments with multitudinous employees and running in an organised, systematic manner would, by no means, be treated at par with the exempted casual associations. *Madras Gymkhana Club* (supra) has failed to appreciate that the scale of operation of such voluntary associations is a relevant criterion in determining whether the engagement of employees follows an organised and systematic structure.

G. ***Liberal Professions***

99. A solicitor's firm, a medical polyclinic or an architect's office, where a body of employees works in coordination to enable professional services to be delivered to clients and patients, displays every feature of an industry within the meaning of Section 2(j). The professional standing of the person at its head cannot place the establishment as a whole beyond the reach of the ID Act. Nor can it be said that the solicitor's clerk, the stenographer or the librarian contributes nothing merely because the legal advice ultimately rendered is the product of the solicitor's own skill, for without their assistance the solicitor could not function at all. The dignity or intellectual character of a profession has no bearing on the

only question the definition asks, which is whether the establishment functions through organised cooperation between employer and employee for the rendering of services to those it serves.

100. This conclusion must, however, be confined to establishments where such organised labour genuinely exists. A single practitioner, whether a lawyer, a rural doctor or a small-town engineer, working alone or with a solitary assistant, cannot be said to run an industry. This is not because that assistant's work is unimportant, but because the organisational structure which the concept of industry presupposes is simply absent. It is this distinction, between the organised professional establishment and the solitary practitioner, that ought to govern the application of the definition to liberal professions.

STARE DECISIS AND RECONSIDERATION OF BANGALORE WATER SUPPLY

101. Having approved the majority view in *Bangalore Water Supply* (supra), I shall now examine whether its ratio nonetheless calls for reconsideration when tested against the well settled principles of stare decisis.

102. Stare decisis, literally understood, requires Courts to stand by things decided and not to disturb what is settled. The underlying logic of the doctrine is to promote certainty and consistency in judicial decisions and enable an organic development of the law, while providing assurance to

the individual regarding the consequences of transactions forming part of daily affairs[120]. Yet, continuity does not require the Court to preserve demonstrable error or compel the law to remain fixed while the world to which it applies has materially changed. Stare decisis is a principle of continuity, not a command of immobility, and this Court has broadly recognised three exceptional situations in which departure from the doctrine is warranted.

103. In *Bengal Immunity Company Ltd. v. State of Bihar*, this Court held that nothing in the Constitution prevents it from departing from a previous decision if convinced of its error and its baneful effect on the general interests of the public[121]. It is not enough that the earlier decision is debatable, that some of its expressions are broad, or that another construction may appear preferable. The first exception to stare decisis is applicable only when the error is manifest in principle or method and sufficiently grave that its continuation perpetuates injury to the administration of law or the general public. As laid down in *Raghubir Singh* (supra), a legal rule, once authoritatively declared, does not remain open for reconsideration merely because another interpretation is also reasonably possible, or because a later Bench might have chosen differently had the question arisen before it in the first instance[122].

[120] *Union of India & Anr v. Raghubir Singh (Dead) By Lrs. Etc*, (1989) 2 SCC 754, See Para 9
[121] 1955 SCC OnLine SC 2, See Para 22
[122] See Paras 21-24

104. The second exception is attracted where a rule, though sound when declared, has ceased to fit the conditions upon which it was premised. In *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Ors*[123], this Court observed:

> *"As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations"*

Such adaptation is warranted when later experience demonstrates that the rule rests upon factual assumptions which no longer hold, has become incapable of consistent application, or frustrates rather than advances the purpose it was intended to serve. However, it must be borne in mind that although law must change with time, it cannot be so fickle as to change with every change of guard[124].

105. The third exception concerns the consequences of reversal. In *Keshav Mills Co. Ltd. v. Commissioner of Income Tax*[125], this Court held that an earlier decision should be reviewed only for compelling and substantial reasons. Among the matters which must enter that assessment are whether the earlier view has been followed in subsequent decisions, whether people and institutions have acted upon it, and whether its

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[123] (1974) 2 SCC 402, See Para 22

[124] *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534, See Paras 171-174

[125] 1965 SCC OnLine SC 80, See Para 23

reversal would produce "public inconvenience, hardship or mischief". Therefore, the longer a rule has endured, the more closely it is integrated into the administration of a statute, and the greater the reliance placed upon it, the more compelling must be the justification for its displacement.

106. Therefore, three inquiries assume particular importance when reconsideration of a long-standing precedent is sought:

i. Whether the earlier ruling is patently erroneous, and its continued enforcement injurious to the public interest?

ii. Whether a substantial alteration in social, economic, technological or legal conditions has rendered the rule unworkable, outmoded or bereft of its original justification?

iii. Whether the dislocation, inequity and public harm likely to be caused by unsettling the decision would outweigh any juridical benefit secured by its reversal?

107. I shall now test the ratio in *Bangalore Water Supply* (supra) against these three considerations.

A. <u>Is Bangalore Water Supply ratio patently erroneous?</u>

108. For the reasons already discussed, the ratio in *Bangalore Water Supply* (supra) cannot be characterised as patently erroneous. It lies closest to the object of the ID Act, which is concerned not with the commercial

identity of an establishment but with the orderly resolution of industrial conflict wherever labour is organised under an employer in a systematic activity for the production of goods or the rendering of services.

B. <u>Does the ratio require reconsideration in light of changed circumstances?</u>

109. Tennyson's familiar lines capture the necessity which sometimes compels a settled rule to yield[126]:

> *"The old order changeth, yielding place to new,*
> *And God fulfils Himself in many ways,*
> *Lest one good custom should corrupt the world."*

A legal rule may require reconsideration where the circumstances to which it applies have so substantially altered that the rule now operates outside its original context. This too was among the reasons which prompted the five Judge Bench in *Jai Bir* (5J) (supra) to make the reference, for it took the view that the working experience of the law after *Bangalore Water Supply* (supra) had revealed practical difficulties, including the proliferation of industrial claims, awards of heavy back wages, and the possible consequences of an overextended definition on employers, employees and the public. Thus, the question is whether the economic and technological transformations since *Bangalore Water*

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[126] Alfred, Lord Tennyson, "The Passing of Arthur" in *Idylls of the King*

Supply (supra) have rendered its definition of industry outmoded or, on the contrary, reinforced the necessity for its continued application.

110. The advancement of technology has brought automation and computerisation into the means of production and has enhanced the efficiency and quality of goods and services. Such development is part of the march of science and civilisation and is most welcome. Its consequential impact, however, is a diminution of the role of human agency in the production of goods and services. Work once performed by a large body of labour may now be undertaken through machines, algorithms and automated systems requiring a substantially smaller workforce. Increasing shift of businesses to e-commerce platforms while enabling easier access to goods and services through e-aggregators has dismantled the organised labour sector and given rise to gig-employments with little or no employment rights[127].

111. Coupled with these transformative changes in commerce and means of production, the advent of a globalised economy has increased manifold the potential movement of capital across national boundaries. Capital has become more mobile, technologically amplified and capable of swiftly switching from one area of activity to another. Labour, by contrast, remains locally embodied, and its demand restricted by geographic and other limitations. This evolving matrix has increased the gradient

[127] As per 2025-26 Economic Survey of India, the workers in the gig sectors have increased to 12 million in F.Y. 2025 from 7.7 million in F.Y. 2021. They now represent 2% of the total workforce in India and are projected to constitute 6.7% of the workforce by 2029-30, contributing ₹ 2.35 lakh crore to India's GDP

between capital and labour and has produced a more unequal bargaining plane between the two in recent times. The displacement or increasing marginalisation of manual labour does not make industrial protection irrelevant. It makes the preservation of an effective remedial framework more imperative.

112. The response of the State to automation, liberalisation and globalisation is principally a matter of legislative and executive policy, in which Courts are ordinarily slow to intervene. The approach of the Court to these emerging challenges should not be to impede technology, arrest economic reform or choose between competing models of economic policy, but should essentially be rooted in constitutional obligations and sensitivities. It must ensure that constitutional guarantees of equality and human dignity, illuminated by the Directive Principles and particularly Articles 38 and 39, remain assured to those whose bargaining positions are becoming increasingly unequal.

113. The continued application of *Bangalore Water Supply* (supra) does not depend upon a socialistic pattern of State ownership or economic governance. It rests upon the more elementary proposition that where capital organises labour for the systematic production of goods or rendering of services, the law must provide a level and accessible field for resolution of disputes between them. The ID Act remains the surest statutory platform for such resolution. Its machinery enables disputes to be addressed through conciliation and adjudication before they harden into industrial unrest. That objective is as relevant to a liberalised

economy as it was to the economic order in which the statute was enacted.

114. It is often suggested that industrial legislation is unduly sympathetic to employees and thereby hinders commercial output, economic efficiency or the functioning of altruistic institutions. This misconception proceeds from an erroneous perspective that the rights of one stakeholder must be curtailed either to increase output or to relieve certain employers from industrial obligations. Such an outcome-oriented approach to beneficial legislation is fallacious. On a jurisprudential plane, Courts interpret legislation by reference to its object, purpose and the rights and obligations which it creates. They do not first select a desirable economic outcome and then constrict the statutory text to secure it.

115. Further, when a law provides access to justice and adjudication in disputes between stakeholders occupying unequal positions, their relative status cannot be ignored. Where the bargaining field is substantially lopsided, a beneficial enactment must receive a construction which extends its ameliorative sweep to the disadvantaged group rather than augmenting the position of the already powerful. This does not require every dispute to be decided in favour of the employee. It requires that the employee is not denied the statutory forum itself by an artificial narrowing of the jurisdictional threshold.

116. Seen against these changes, a rights-based approach giving the widest reasonable coverage to systematic and organised activity conducted

through cooperation between an employer and employees is not an anachronism. It is a means of ensuring smooth, effective and, where necessary, adjudicated resolution of industrial disputes. The reduction in the numerical strength of labour through automation cannot become a reason to weaken the protection available to those who remain. The law must not allow the rights of labour to be forgotten in the rush for greater efficiency and profit.

C. <u>Would unsettling the ratio cause greater public harm than good?</u>

117. The final consideration is the effect which overruling *Bangalore Water Supply* (supra) would have upon the administration of industrial law. Decisions construing statutes attract a particularly strong claim to continuity. Parliament may amend the provision if the judicial construction does not accord with its policy. Where the legislature has allowed an interpretation to govern for several decades and thereafter replaces the statute prospectively, a Court should be slow to alter the settled meaning of the former enactment for the residual class of matters governed by it.

118. It is all the more inadvisable, in the case of a sunset legislation like the ID Act, to unsettle the existing state of law and affect rights of individuals which are at various stages of adjudication. For nearly five decades, Courts, tribunals, employers, employees and trade unions have ordered their conduct and litigation upon the understanding that the triple test governs Section 2(j). References have been made, claims entertained,

settlements reached, awards rendered and remedies granted or refused on that basis. Numerous proceedings instituted under the ID Act remain at different stages of the judicial hierarchy. To substitute a new test at this stage would alter the jurisdictional premise upon which these proceedings were commenced and contested. No exceptional circumstances could be demonstrated to take recourse to such a drastic stance.

119. One has to keep in mind that the disputes arising after the commencement of the IR Code are governed by the new definition which Parliament has enacted in Section 2(p). The practical effect of altering the *Bangalore Water Supply* (supra) ratio would thus fall upon legacy rights, liabilities and proceedings arising under the repealed ID Act. It would change the goalposts after parties have travelled substantial distances through the adjudicatory process and would require pending matters to be reassessed under a standard of which the parties were unaware when the causes of action arose. The triple test in *Bangalore Water Supply* (supra) has, for nearly five decades, kept the doors of industrial adjudication open to those who labour within organised undertakings. Those doors I decline to close.

IMPACT OF LEGISLATIVE AMENDMENTS ON BANGALORE WATER SUPPLY

120. The final aspect to be considered is whether the provisions of an inert legislation can cast a shadow on adhering to the wide and inclusive interpretation of industry under the repealed ID Act.

121. A judgment interprets an existing law to further its object and purposes and *Bangalore Water Supply* (supra) seeks to achieve that end to the fullest extent. The narrow scope of the 1982 Amendment Act and the IR Code did not fall for interpretation in *Bangalore Water Supply* (supra). It may be argued that such amendment or new law is an expression of the legislative will to give a narrow interpretation to the expression 'industry'. The object and purpose of the ID Act, therefore, need to be reviewed and *Bangalore Water Supply* (supra) revisited.

122. A legislature has ample powers to amend/repeal an existing law to address present necessities. To achieve such end, the legislature may even delegate power to the executive to give retrospective operation to such amendment/repeal. In such cases, the substratum of the law changes retrospectively rendering the applicability of existing precedents to the relevant law subject to legislative changes. The delegated power to notify the date and manner of operation of an amendment is a legislative process. Courts do not have the power to give effect to an inert amendment which has not been notified, far less direct its retrospective operation[128]. Such power cannot be traced to judicial legislation in the occupied field as it would amount to encroaching on an existing law.

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[128] *Aeltemesh Rein, Advocate, Supreme Court of India v. Union of India & Ors*, (1988) 4 SCC 54, See Paras 5 - 6

123. Admittedly, the executive chose not to notify the 1982 Amendment Act for more than four decades. This merely shows the State's disinclination and lack of unanimity in giving effect to such amendment. The judiciary ought not use such inert provisions kept on the back burner as an interpretative tool to revisit a binding precedent. What the Court cannot do directly, i.e., issue a mandamus to notify an inert amendment, it cannot indirectly do by referring to a stillborn amendment to reconsider the *Bangalore Water Supply* (supra) ratio.

124. Parliament has now made its own prospective adjustment through Section 2(p) of the IR Code. It retained the systematic employer-worker cooperation test while expressly excluding certain charitable, social, philanthropic and sovereign activities. It would be incongruous for this Court to take exclusions designed for the new Code and project them backwards into Section 2(j) of the ID Act, especially when there is no provision which gives Section 2(p) of the IR Code retrospective operation over causes governed by the repealed ID Act. The new definition being wisely made prospective in operation ought not, by way of judicial rethinking, affect the contours of a binding precedent.

CONCLUSION

125. In light of such discussion, I answer the reference in the following manner:

I. The manner in which the ratio in *Bangalore Water Supply* (supra) has been referred for reconsideration is in conformity with the law declared in *Dawoodi Bohra* (supra), as affirmed in *Aligarh Muslim University* (supra). As such, the reference requires to be answered on merits.

II. On merits, I hold the triple test laid down by Krishna Iyer, J., in paragraphs 140-144 of *Bangalore Water Supply* (supra) exhibits a rare felicity in judicial interpretation. Through such triple test, *Bangalore Water Supply* (supra) while remaining faithful to the text, extended the beneficial object of the law to all employer employee disputes wherever the stakeholders are engaged in an organised systematic activity akin to trade and commerce to produce goods and services for the satisfaction of human needs and did not restrict it merely to activities which are run on commercial lines. The criticism that it converts every organised human endeavour into an industry is misplaced, for the triple test, in fact, carves out just and proper exceptions in cases of casual and non-systematic activities like domestic service, individual professionals, small and unorganised clubs/association of persons.

III. In a constitutional democracy, the concept of sovereignty has undergone a jurisprudential contraction and is restricted to core inalienable duties for which the State is not answerable to Courts of law but to the people in a political-democratic discourse. Viewed from this perspective, welfare activities of the State and schemes undertaken by Government departments and their instrumentalities are not, by reason only of their public, charitable or welfare character, placed beyond Section 2(j). Mere vesting of a duty in the State by statute or by the Constitution, even a duty undertaken to fulfil the lofty mandate of Part IV, does not clothe it with sovereign immunity from industrial law. Articles 309 to 311 give little solace as they cover a narrow sliver of civil posts. In these circumstances, unless appropriate legislation engrafting equally efficacious remedies for access to justice is passed, to exempt statutory or welfare activities discharged by Government departments or their instrumentalities from the beneficial scope of the ID Act on the specious plea of sovereign functions would leave a great multitude of workmen engaged in the organised undertakings of the State without the remedies which the said Act was enacted to secure.

IV. From the lens of industrial law, charitable undertakings, temples and educational institutions are all viewed not by the spiritual, religious or benevolent object they pursue, but by the character of the employer employee relationship through which they function. Where such activities are carried on through an organised and systemic relationship between employer and employee, they answer the triple test and the absence of profit or the presence of a benevolent object does not take them outside the ambit of the beneficial legislation.

V. The 1982 Amendment Act was never notified. It is settled law that Courts cannot direct the Government to notify an amendment which is a part of the legislative process. In view of such disinclination, it would be wrong to rely on an inert law to redraft the *Bangalore Water Supply* (supra) ratio. Similarly, the new definition of industry in the IR Code has been given prospective operation and in light of Section 6 of the General Clauses Act, 1897 preserving rights and liabilities acquired or incurred under the repealed law, the ratio in *Bangalore Water Supply* (supra) dealing with cases under the repealed ID Act ought not to be disturbed with reference to the new definition.

VI. The ratio in *Bangalore Water Supply (supra)* applies to a sunset legislation dealing with legacy matters and has been consistently followed for decades. Given this situation, in view of the settled principles of stare decisis, such interpretation which yields to no manifest error, needs to be retained keeping in mind the fact that the economic and technological changes since it was decided have weakened rather than strengthened the case for revisiting it. To overrule it now, would unsettle rights and proceedings doing more harm than good.

VII. However, it is apposite to note that the ratio in *Bangalore Water Supply* (supra) limited itself till a new definition was introduced. As a new law redefining "industry" has come into force, the ratio in *Bangalore Water Supply* (supra) would remain restricted to the proceedings pending under the repealed law and the provisions of the new law, i.e. IR Code shall be independently interpreted.

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(JOYMALYA BAGCHI)

NEW DELHI
AUGUST 20, 2026