

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 897 OF 2002

STATE OF U.P.

...APPELLANT(S)

VERSUS

JAI BIR SINGH

...RESPONDENT(S)

With

CIVIL APPEAL NO. 4646 OF 2007

CIVIL APPEAL NO. 3647 OF 2007

SLP (C) NO. 1112 OF 2009

CIVIL APPEAL NO. 3920 OF 2010

CIVIL APPEAL NO. 3119 OF 2011

CIVIL APPEAL NO. 6114 OF 2001

CIVIL APPEAL NO. 6108 OF 2002

CIVIL APPEAL NO. 1276 OF 2001

CIVIL APPEAL NO. 1279 OF 2001

CIVIL APPEAL NO. 1278 OF 2001

CIVIL APPEAL NO. 6471 OF 2002

CIVIL APPEAL NO. 2506 OF 2002

CIVIL APPEAL NO. 8597 OF 2001

CIVIL APPEAL NO. 4569 OF 2002

CIVIL APPEAL NO. 5101 OF 2002

CIVIL APPEAL NO. 2409 OF 2002

SLP (C) NO. 20982 OF 2002

CIVIL APPEAL NOS. 355-358 OF 2003
SLP (C) NO. 14085 OF 2004
SLP (C) NO. 11291 OF 2004
SLP (C) NO. 14127 OF 2004
CIVIL APPEAL NO. 7994 OF 2004
SLP (C) NO. 4139 OF 2005
CIVIL APPEAL NO. 1274 OF 2007
CIVIL APPEAL NO. 1273 OF 2007
CIVIL APPEAL NOS. 1311-1312 OF 2008
SLP (C) NO. 16301 OF 2007
SLP (C) NO. 3107 OF 2008
SLP (C) NO. 4327 OF 2008
SLP (C) NO. 4329 OF 2008
SLP (C) NO. 4328 OF 2008
CIVIL APPEAL NO. 296 OF 2008
SLP (C) NO. 16276 OF 2008
SLP (C) NO. 17224 OF 2008
CIVIL APPEAL NO. 5519 OF 2012
CIVIL APPEAL NO. 5681 OF 2010
SLP (C)... CC NO. 7990 OF 2009
CIVIL APPEAL NO. 7757 OF 2011
CIVIL APPEAL NO. 1131 OF 2012
CIVIL APPEAL NOS. 8149-8151 OF 2012
CIVIL APPEAL NOS. 4505-4506 OF 2013
CIVIL APPEAL NOS. 4507-4508 OF 2013
SLP (C) NOS. 12679-12682 OF 2014

SLP (C) NO. 1857 OF 2016

SLP (C) NO. 14156 OF 2021

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. A statute that creates Conciliation Officers, Labour Courts and Industrial Tribunals and hands them the power to order reinstatement and compel settlements needs to say with precision who falls within its reach. Section 2(j) of the Industrial Disputes Act, 1947, was Parliament's attempt to say so. However, it neither settled its boundaries nor specified its constituents with certainty. It opened it. For more than 30 years, hospitals, universities, co-operative societies, gymkhana clubs and Government departments went to court to argue whether they are covered or not under that definition. The dispute persisted for over four decades, ultimately assuming such proportions as to warrant reference to a seven-judge Bench of the Supreme Court, which rendered its decision in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*.¹

2. Section 2(j), read literally, is wide enough to describe a factory and a family kitchen in the same breadth, and, on other readings, narrow enough to exclude workers it clearly meant to protect. So, the litigation

¹ (1978) 2 SCC 213.

continued despite the verdict of the seven-judge Bench. This nine-Judge Bench is now assembled to resolve the persisting eight-decade uncertainty.

3. The process of adjudication that we have undertaken is no different from the process undertaken by any of the Benches that delivered their judgments, till, of course, overruled by later determinations. The process of references, reconsiderations, reconstructions and then judgments cancelling each other continued, and may even continue before an eleven-Judge Bench to reconsider the views expressed by us. The problem, as I understand is not so much in our understanding of the definition of “Industry”, but in the way the definition is formulated. It suffers from certain structural errors.

4. We are told that this Court has no option except to keep interpreting and delivering its verdict. There is also a great disconnect between the legislature and the courts, i.e., between laws formulated by the parliament and interpretations rendered by the Courts. Justice Benjamin N. Cardozo, while addressing the Bar Association of New York, said;

“The Courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed.... We must have a courier who will carry the tidings of distress.... Today Courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of Judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labours

bears the tokens of the strain. On the other side, the Legislature, informed only casually and intermittently of the needs and problems of the Courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and Courts move on in proud and silent isolation. Some agency must be found to mediate between them.”²

5. There must be some way out of this perpetuating cycle. In *Yash Developers v. Harihar Krupa Coop. Housing Society Ltd.*³, this Court recognised the obligation of the executive government to conduct performance audits of statutes. This Court declared that reviewing and assessing the implementation of a statute is an integral part of the Rule of Law. It is in recognition of this obligation of the executive government that the Court held that constitutional courts can direct Governments to carry out a performance audit of statutes. The reasoning of the Court is as follows;

“58. Four aspects for achieving justice are well founded and articulated as: (i) distribution of advantages and disadvantages of society, (ii) curbing the abuse of power and liberty, (iii) deciding disputes, and (iv) adapting to change.⁴ Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of change or not to change, but of the direction and the speed of change and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system and it would require assessment of the working of the law, its accessibility, utility and abuse as well.

59. The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and a real time assessment of the impact that the statute is having. As stated above, reviewing and assessing

² Also cited by Krishna Iyer, J. in *Bangalore Water Supply (supra)*.

³ (2024) 9 SCC 606.

⁴ See: “Justice in Adapting to Change”, in R.W.M. Dias, *Jurisprudence*, pp. 305-327 (5th Edn., 2013).

the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that a law is working out in practice as it was intended. If not, to understand the reason and address it quickly. It is in this perspective that this Court has, in a number of cases, directed the Executive to carry a performance/assessment audit of a statute or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.⁵

6. If proceedings initiated under the Industrial Dispute Act, 1947, are interdicted at the very threshold on the ground of a *jurisdictional fact* that the entity in question is not an industry as per the definition, and this question is raised frequently, and judicial review Courts keep staying the proceedings, then the very purpose and object of the beneficial legislation is lost. This Court cannot be a silent spectator of this phenomenon. Addressing such a situation arising due to legislative and executive actions, this Court recognised the role of judiciary in the following terms;

60. Constitutional courts are fully justified in giving such directions as they are in a unique position of perceiving the working of a statute while exercising judicial review, during which they could identify the fault-lines in the implementation of a statute....

61....Though cases are decided on their own merit and the lis disposed of, what is left behind is the institutional memory of the Court about the working of the statute and its interpretation preserved as precedents. Over a period of time, a critical mass of adjudicatory determinations on the working of the statute is built. This critical mass, coupled with the experiences gained by the Judges and the Court on the working of the statute, is of immense value for auditing the working of the legislation. It enables the court to assess whether the purpose and object of the Act is being achieved or not.

(...)

64. ... In such circumstances, the judicial role does encompass, in this Court's understanding, the power, nay the duty to direct the executive

⁵ *State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404; *Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd.*, (2021) 5 SCC 671; *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667; *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 5 SCC 313; *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224.

branch to review the working of statutes and audit the statutory impact. It is not possible to exhaustively enlist the circumstances and standards that will trigger such a judicial direction. One can only state that this direction must be predicated on a finding that the statute has through demonstrable judicial data or other cogent material failed to ameliorate the conditions of the beneficiaries. The courts will also do well, to arrive the very least, at a prima facie finding that much statutory schemes and procedures are gridlocked in bureaucratic or judicial quagmires that impede or delay statutory objectives. This facilitative role the judiciary compels audit of the legislation, promote debate and discussion but does not and cannot compel legislative reforms.”⁶
(emphasis supplied)

7. Following the above mandate, on an empirical examination, we find that Benches of varied quorum – four-judge,⁷ to a five-judge,⁸ to six⁹ and a seven-judge¹⁰ bench of this Court attempted to find certainty in the meaning of the expression ‘industry’. Further, there are at least 14 three-judge bench decisions and more than 27 two-judge bench verdicts of this Court grappling with the same issue. It is in this context that the interpretation clause, i.e., the definition of Industry under Section 2(j), needs to be examined.

8. Section 2(j) opens with the standard phrase of a legal definition: “industry means....” But the mere grammatical form of a definition does not guarantee that the sentence following it actually performs the function a definition is supposed to perform. Law needs a definition, not an explanation. Telling a labour officer *why* industrial disputes need to be

⁶ Yash Developers (supra).

⁷ Baroda Borough Municipality v. Workmen, (1956) 2 SCC 535.

⁸ D. N. Banerji v. P. R. Mukherjee, (1952) 2 SCC 619.

⁹ Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970) 1 SCC 735.

¹⁰ Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.

resolved expeditiously, or how to prioritise either the labour or the capital on a certain philosophy, does not tell him whether the hospital in front of him is, or is not, within his jurisdiction. Section 2(j) is written in the grammatical shape of a definition; whether it actually behaves like one has been the question. What then is a good definition?

9. Definitions have a purpose to subserve. Every act of communication, spoken, written or argued in a court, relies on a shared understanding of what the words mean. In legal reasoning, this shared understanding is not an informal assumption but the very ground on which arguments are built, precedents applied, and judgments rendered. It is therefore compelling that we must have a rigorous and testable framework for what a definition must do and what disqualifies it.

10. To start with, a definition is neither an explanation nor a description of the subject; it is a *precision instrument*, whose function is to mark the boundary of a concept. It is not usage or convenience, but a matter of epistemological precision.

11. The structure of a definition consists of three elements: *the subject matter*- for example, “Industry” as in this very case, its *properties* - that is, the characteristic qualities or features that reside in the subject matter and then the *relationship* or connection between the two, i.e., the subject matter and its properties. If any one of these elements is uncertain, then cognisance of the subject matter becomes indeterminate. This

indeterminacy arising due to uncertainty in/of the property(ies) of an 'industry' and their relationship with the subject matter has, in my opinion, been the fundamental problem in the definition of Industry.

12. The definition of a definition can be explained as comprising of two parts. In the first place, a definition must *convey a property or a character held in common with nothing else*. In other words, the defining property must be unique to the class – present in every genuine member and absent in everything that is not a member. Secondly, the property or quality of the subject matter of the definition must survive three independent tests: free from *overextension*, free from *underextension*, and also *avoid structural impossibility*.

13. Cognition of similar properties residing in all members of the defined class, coupled with exclusion of everything outside the defined class, and including every genuine member of the class, is the basis for certainty. The dual test of *exclusion of dissimilar* and *inclusion of similar properties* is integral to a valid definition. Any definition must be tested against both purposes independently. Passing one test while failing the other produces a definition that is either over-broad or over-narrow and is termed ineffective; in fact, it results in a defective definition.

14. The discussion about the compelling need to have a correctly formulated definition is only to indicate that the resolution of a dispute concerning a jurisdictional fact based on a defined term does not flow out

of the interpretations when fundamental defects of over-inclusion, under-inclusion and certain improbabilities come to be associated with definitions. This problem cannot be brushed away on the grounds that the solution is within the legislative province.

15. However, a detailed analysis of the definition in Section 2(j) is not necessary as the Industrial Disputes Act, 1947, along with the definition of ‘industry’ under Section 2(j), is now repealed. In its place, w.e.f. 21.11.2025, the Industrial Relations Code, 2020 has come into force and “industry” stands redefined under Section 2(p) of the 2020 Code. It is far more important to deal with the consequences of such repeal on the Reference to this nine-judge Bench for authoritative pronouncement.

16. On the preliminary issue, I believe there is no illegality in the procedure adopted for referring the ratio in *Bangalore Water Supply (supra)* to the bench of nine judges. The Reference is not in violation of the principles laid down by the *Dawoodi Bohra*¹¹. I am also of the opinion that, but for the repeal, it would have been necessary to examine the merits of the matter, as I have no doubt in mind that the definition of ‘industry’ under Section 2(j) of the repealed Act, as it stood, had certain core as well as peripheral linguistic problems leading to uncertainty throughout its lifetime. I need not elaborate on this as Justice Krishna Iyer

¹¹ Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673.

himself mentioned about the need for a better definition as also the *judicial struggle for certainty* about the scope and content of 'industry' from the very commencement of the Act. In his erudite opinion, Hon'ble Chief Justice has also referred to a number of decisions of this court after *Bangalore Water Supply (supra)*, seeking settlement and certainty about the core and content of the definition. Therefore, the need to address the issue relating to the accurate scope of 'industry' under Section 2(j) was compelling when the Reference was made; however, for the reasons to follow and the position that has been taken, it is not necessary to answer the questions referred on merits. I will, in short, first refer to the perspective in which Hon'ble Chief Justice and my sister and brother judges have viewed the Reference on.

17. Hon'ble Chief Justice has suggested that the focus on interpreting the repealed Section 2(j) should shift towards the activity of the enterprise rather than the relationship between various actors and the organisational structure of the enterprise per se. In construing the text and structure of the statute, it was felt that industrial activity cannot be wholly divorced from commercial character. Thus, industrial activity can be seen as an undertaking carried on in an organised and systematic manner, involving cooperation between employer and employee, possessing some degree of commercial character. The Hon'ble Chief Justice has concluded that the commercial nature of the activity has to be a relevant factor and cannot

be disregarded altogether. At the same time, the opinion reiterates the well-established position that the presence and absence of a profit motive is not a determinative criterion and hence, even charitable and welfare-oriented activities would not automatically stand excluded from the ambit of the Act, depending on the nature and character of the activity undertaken. Further, the subtle distinction between activities carried on predominantly along commercial lines and those pursued primarily for public welfare, education, charitable, or humanitarian purposes is highlighted. A similar approach is suggested for construing sovereign functions performed by the State. In the ultimate analysis, a closer scrutiny and a case to case approach for classification of entities as 'industry', having regard to totality of circumstances is suggested.

18. In this perspective, the triple test could be calibrated, introducing commerciality as the primary test. As far as the reconsideration of institutional categorisation is concerned, it was felt that an approach that proceeds primarily by reference to pre-determined categories risks pigeonholing institutions without adequate examination of the true nature and dominant character of the activity undertaken. As regards the inquiry is concerned, it is based on substance rather than form, i.e., it is the nature and character of the activity undertaken in conjunction with other indicia that will guide the interpretation.

19. On the other hand, Sister Nagarathna has categorically held that the majority judgment in *Bangalore Water Supply* (supra) is good law and binding. She has also given detailed reasons as to why the Reference need not be answered at the present juncture, by also holding repeal of Industrial Disputes Act, 1947, and introduction of Industrial Relations Code, 2020, w.e.f. 21.11.2025 as reasons for not answering the Reference.

20. Brother Datta has reiterated the above position by holding the Reference not maintainable and the judgment in *Bangalore Water Supply* (supra) being good law. He has observed that the statutory framework under Section 2(j) of the Industrial Disputes Act, 1947, and its judicial exposition in *Bangalore Water Supply* (supra) are in complete harmony and without any quarrel.

21. On the other hand, Brother Bagchi, in agreement with Hon'ble Chief Justice, has held the Reference valid and maintainable. However, on merits of the matter, Brother Bagchi finds the ratio in the seven-Judge judgment a good law which ought to be retained for the reason that the Industrial Relations Code is enforced w.e.f. 21.11.2025. He also observes that any pronouncements on the correctness or otherwise of the judgment in *Bangalore Water Supply* (supra) would cast its shadow on the definition of Industry under Section 2(p) of the Industrial Relations Code, 2020, which should rather be interpreted independently.

22. I have no difficulty in appreciating and understanding the perspectives in which interpretations on repealed Section 2(j) are given by the majority in *Bangalore Water Supply* (supra), as well as the opinions of Hon'ble Chief Justice, and my sister and brother Judges' while answering the Reference. Section 2(j) is open-textual, and interpretations based on the wording of repealed Section 2(j) permit wide and narrow constructs. It is about this very text that, while noting the “*zig-zag course of the landmark cases and the tangled web of judicial thought...*, resulting from obfuscation of the basic concept of ‘industry’...”, Justice Krishna Iyer suggested that “*a careful, prompt amendment of Section 2(j) would have pre-empted this docket explosion before tribunals and courts*”. The impact of interpreting the repealed definition of Section 2(j) is writ large, and the litigation that it has generated during its lifetime, commencing its birth on 11.03.1947, to its repeal on 21.11.2025, is self-evident.

23. My primary concern is that the litigation that has surrounded the interpretation of Section 2(j) should not cast its shadow on the new Industrial Code. We need to break away from the perpetuating interpretative cycle that has afflicted Section 2(j) and protect the Industrial Relations Code, 2020, from any preconceived notions. For effective and efficient interpretation and development of the industrial law, Section 2(p) of the Industrial Relations Code, 2020, must be freed of the bondage of ratio in *Bangalore Water Supply* (supra) or any new definitions that we

may propose while deciding the Reference. In fact, Hon'ble Chief Justice as well as my sister and brother Judges have categorically stated that the views of the nine-Judge Bench should not have a bearing on the interpretation that may subsequently be given to the definition of Industry under Section 2(p) of the Industrial Relations Code, 2020. I am in full agreement with such a declaration. I think it is necessary.

24. Section 2(j), along with the entirety of the Industrial Disputes Act, 1947, on 21.11.2025, was repealed, lock, stock and barrel and from the very same day, the new Industrial Relations Code, 2020, has come into force. Section 2(p) of the Code defining "Industry" is not given retrospective effect. For transactions involving industrial disputes prior to 21.11.2025, it is only the repealed Section 2(j), as interpreted in *Bangalore Water Supply* (supra), that would hold the field. The ratio in *Bangalore Water Supply* (supra) alone would apply for disposing of all the pending cases in which the interpretation of 2(j) of the Industrial Disputes Act, 1947, is involved.

25. If by answering the Reference, the nine-Judge Bench modifies the ratio in *Bangalore Water Supply* (supra), then it will have the effect of creating the third category that would apply exclusively to the pending cases. After the decision in *Bangalore Water Supply* (supra) in 1978, thousands of cases would have been disposed of in accordance with the ratio laid down therein, and I see no justification for not applying the said

ratio to the pending cases. It is not advisable to modify the ratio in *Bangalore Water Supply* (supra) only for the purpose of disposing of the few pending cases, particularly when we are making it clear that the principles that the nine-Judge Bench will have no bearing on the interpretation of the Industrial Relations Code, 2020.

26. Yet another reason for the nine-Judge Bench to refrain from modifying the ratio in *Bangalore Water Supply* (supra) is that an interpretation that restricts the scope and ambit of expression 'Industry' in the repealed Section 2(j) will have the effect of excluding certain entities from being an 'Industry'. Such an interpretation will have the direct consequence of a number of pending cases moving out of the regulatory regime of the Industrial Disputes Act, 1947. In such an event, industrial disputants who have been contesting the case for years would have to seek ordinary civil remedies. It would be a sad story if we were to ask them to file fresh suits before the Civil Court. The consequences are serious, unnecessary, and contrary to the fundamental principle of easy, effective, and expeditious judicial remedies, an integral part of access to justice.

27. In conclusion, the questions referred for consideration of this bench are answered as follows:

- i. The procedure by which the ratio in *Bangalore Water Supply (supra)* has been referred for reconsideration to a bench of nine judges is valid.
- ii. The endeavour of various decisions of the Court after *Bangalore Water Supply (supra)*, leading to the Reference by Jai Bir Singh to bring about certainty about what ‘industry’ entails, is justified. The Reference can be answered on merits.
- iii. While an authoritative interpretation of the definition “Industry” was compelling at the time of the Reference, such a determination has now become unnecessary, with the repeal of the said provision with effect from 21.11.2025.
- iv. With the advent of the Industrial Relations Code, 2020, with effect from 21.11.2025, the ratio in *Bangalore Water Supply (supra)* is now confined to cases arising under the repealed Act. It is prudent to dispose of the pending cases on the basis of the ratio laid down in *Bangalore Water Supply (supra)* without attempting to create a third set of principles applicable only to pending cases.
- v. It is important to ensure that the future interpretation of the definition of ‘Industry’ under Section 2(p) of the Industrial Relations Code, 2020, is not burdened by the existing interpretations based on the repealed Section 2(j) of the Industrial Disputes Act, 1947. The

Industrial Relations Code, 2020, should be interpreted on its own text and in its context alone.

- vi. Further, if the Nine-Judge Bench modifies and restricts the ratio laid down in *Bangalore Water Supply* (supra), it will have the serious effect of excluding certain entities from the fold of the “Industry” as defined under Section 2(j) of the repealed Act. This will have the consequence of excluding long-pending disputes from the regulatory regime of the Industrial Disputes Act, 1947, and the parties will be relegated to remedies before the Civil Court. It is therefore necessary to dispose of the disputes arising under the repealed Act on the basis of the ratio laid down in *Bangalore Water Supply* (supra).

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

**NEW DELHI;
AUGUST 20, 2026**