

# CONCEPT OF 'INDUSTRY' AND 'SOVEREIGN FUNCTIONS' IN INDUSTRIAL LAW : FROM *BANERJI* TO *COIR BOARD*

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## I. PREFATORY

When the Industrial Disputes Act, 1947 (ID Act) was brought on the statute book, labour disputes had already assumed alarming proportions. There were clashes between workmen and employers in several instances.<sup>1</sup> The ID Act was enacted with a view to protecting workers against exploitation and victimization by employers, to pre-empt industrial unrest and ensure resolution of industrial disputes in a peaceful manner with a view to bringing about, in the interests of industrial harmony and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. Industrial harmony ensures peace and amity in the functioning of the industry which in turn helps in increasing industrial production which is acknowledged to be the lifeline of a developing society.<sup>2</sup> Resultantly, the employer, the workman and the society at large for whom uninterrupted supply of goods and services are of paramount importance are benefited. Misuse of rights and obligations beyond permissible limits by employers and workmen are to be dealt within the framework of the law. For this purpose, the ID Act provides machinery for the investigation and settlement of industrial disputes with a view to avoiding delays. The Act contemplates realistic and effective negotiations with the help of a conciliation machinery envisaged in the Act as per the needs of the society, keeping in view the fast changing norms of a developing country like India.<sup>3</sup> If the conciliation machinery fails to bring about an amicable settlement of the dispute between the parties, labour courts and industrial tribunals set up under the Act for adjudication of the industrial disputes are expected expeditiously to dispose of the references made to them with a view to doing justice to both employer and workman in tune with the overall concept of social justice.

The Act has given the words 'industry' and 'industrial dispute' a comprehensive import to include various and varied forms of 'industry' so that

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<sup>1</sup> Statistical data given by the National Commission on Labour 1969 (NCL), shows that from 1946 to 1968 maximum number of mandays lost were in 1946 and 1947. For details, see *Report of the National Commission on Labour* 337-38 (1969); also *D.N. Banerji v. P.R. Mukherji*, AIR 1953 SC 58 at 61 (*Banerji*).

<sup>2</sup> *Banerji*, *id.* at 61

<sup>3</sup> See *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82.

disputes in the industry are dealt with in a manner more adapted to conciliation and settlement than determination of the respective rights and liabilities according to strict legal procedure and principles.<sup>4</sup> The conflicts between capital and labour are now required to be determined more from the standpoint of status than of contract.<sup>5</sup>

While defining 'industry' in the widest permissible limits and 'sovereign functions' within a limited orbit, industrial adjudication has greatly been influenced by the aforementioned precepts. An enterprise cannot, therefore, be excluded from the ambit of the Act merely because of individual predilection of a judge.

## II. 'INDUSTRY': JUDICIAL INTERPRETATION

The words 'employer', 'industry', 'industrial dispute' and 'workman' in section 2(g), (j), (k) and (s) of the ID Act<sup>6</sup> are statutory terms, wider in import than their ordinary meaning. Merely because the employer is a government department or a local body, etc., the enterprise does not cease to be an 'industry'. This is in view of the fact that expansion of the governmental or

<sup>4</sup> *Supra* note 1 at 60.

<sup>5</sup> *Ibid.*

<sup>6</sup> The ID Act, 1947 defines 'employer', 'industry', 'industrial dispute' and 'workman' thus:  
 Section 2(g): "*employer*" means (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.  
 Section 2(j): "*industry*" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.  
 Section 2(k): "*industrial dispute*" means any dispute or difference between employers and employees, 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.  
 Section 2 (s): "*workman*" means any person (including any apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-  
 (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950(46 of 1950), or the Navy Act, 1957 (62 of 1957); or  
 (ii) who is employed in the police service or as an officer or other employee of a prison; or  
 (iii) who is employed mainly in a managerial or administrative capacity; or  
 (iv) who, being employed in supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

municipal activities in the fields of productive industry is a feature of developing welfare states, with the result that the production activities or the service sectors which were hitherto in the realm of private enterprise are now being undertaken by the state. Ideologically, it ensures overall welfare of the society with least exploitation of the workmen and also makes the production of goods and material services cheaper by eliminating profit motive. Resultantly, what the common man does not consider as 'industry' need not necessarily stand excluded from the statutory concept.<sup>7</sup>

It was not surprising that immediately after the Act came into force issues as to whether a dispute between the employees on the one side and the government department or a local body or a statutory board, society or a like entity in connection with the discharge of its normal activities on the other is to be regarded as an 'industrial dispute' engaged the attention of labour courts and tribunals. It was but natural that, after the Supreme Court declared<sup>8</sup> that it had jurisdiction to entertain special leave to appeal under Article 136 of the Constitution of India against the awards of labour courts and tribunals constituted under the ID Act, industrial awards also came to be challenged directly before Supreme Court; so also awards dealing with the meaning of 'industry' and 'industrial dispute' under the ID Act. In fact managements, as a strategy to prolong the adjudication on merits, even challenged before the High Courts and the Supreme Court the findings of labour courts and industrial tribunals on preliminary issues as well. The court had to deprecate this 'unhealthy and injudicious tactics' of the employers of raising preliminary dispute that the activity in question was not 'industry' within the meaning of the Act so as to unduly prolong the adjudication on merits.<sup>9</sup>

A study of the judgments of the Supreme Court from *Banerji to Coir Board*<sup>10</sup> brings to the fore a variety of cases that the court had to decide on the

<sup>7</sup> "In the ordinary or non-technical sense, according to what is understood by the man in the street, 'industry' or 'business' means an 'undertaking' where capital and labour co-operate with each other for the purposes of producing wealth in the shape of goods, machines, tools etc., and for making profits. The concept of 'industry' in this ordinary course applies even to agriculture, horticulture, pisciculture and so on and so forth..." Chandrasekhara Aiyer J. in *Banerji*, *supra* note 1 at 60.

<sup>8</sup> *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd*, 1950 LLJ 921 : AIR 1950 SC 188.

<sup>9</sup> *Council for Cement and Building Materials v. State of Haryana* (1996) 3 SCC 206; also see *Cooper Engineering Ltd. v. P.P. Mundhe* (1975) 2 SCC 661 at 667; *S.K. Verma v. Mahesh Chandra* (1983) 4 SCC 214; *D.P. Maheshwari v. Delhi Admn.* (1983) 4 SCC 293; *Workmen v. Hindustan Lever Ltd.* (1984) 4 SCC 392 at 394.

<sup>10</sup> *Coir Board, Ernakulam, Kerala State v. Indira Devi P.S.* (2000) 1 SCC 224 (*Coir Board*) [Coram: A.S. Anand, C.J., S.P. Bharucha & M. K. Mukherjee, JJ.] Earlier in *Coir Board, Ernakulam, Cochin v. Indira Devi, P.S.*, (1998) 3 SCC 259, a division bench of the court consisting of Sujata V. Manohar & D.P. Wadhwa, JJ. had directed that the matter be placed before the Chief Justice to decide as to whether a larger bench should be constituted to reconsider the decision of seven judge bench in *Bangalore Water Supply & Sewerage Board*

question of ambit of 'industry' under the Act. The activities which engaged the attention of the court on the issue of 'industry' were those of municipalities, local bodies, government run hospitals, educational institutions, liberal professions, clubs, state and central government departments, etc.

The definition of 'industry' in section 2(j) is both exhaustive and inclusive. It is in two parts. The first part lays down that it "means any business, trade, undertaking, manufacture or calling of employers" and the second part specifies that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen." Thus, while the first part defines it from stand point of the employer, the second part visualises it from that of the employees. Discussing both these parts, the Supreme Court, in *Madras Gymkhana Club Employees' Union v. Madras Gymkhana Club*,<sup>11</sup> attempted to keep the two notions concerning employers and employees apart and expressed the view that denotation of the term 'industry' is to be found in the first part relating to the employers and the connotation of the term is intended to include the second part relating to workmen. Later on the court in *Safdarjung Hospital v. Kuldeep Singh*<sup>12</sup> held that the definition had to be read as a whole and when so read it denoted a collective enterprise in which employers and employees were associated. It did not exist by the employers alone or by the employees alone. It existed only when there was a relationship between employers and employees, the former engaged in 'business, trade, undertaking, manufacture or calling of employers' and the latter engaged in 'calling, service, employment, handicraft or industrial occupation or avocation'. The court observed:

There must, therefore, be an enterprise in which the employers follow their avocation as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. The definition no doubt seeks to define 'industry' with reference to employers' occupation but includes the employees, for without the two there can be no industry. An industry is only to be found when there are employers and employees, the former relying upon the services of the latter to fulfill their own occupations.<sup>13</sup>

Historically speaking, the definition of 'industry' in the ID Act has its beginning in Australia,<sup>14</sup> even though the bulk of *corpus juris* is a replica of

v. A. Rajappa (1978) 2 SCC 213 (*Bangalore Water Supply*) on the interpretation of the definition of 'industry' under section 2(j) of the I.D. Act, 1947.

<sup>11</sup> AIR 1968 SC 554 (*Gymkhana Club*).

<sup>12</sup> (1970) 1 SCC 735 (*Safdarjung*).

<sup>13</sup> *Id.* at 741.

<sup>14</sup> The definition is based on the Australian statute i.e. section 4 of Commonwealth Conciliation and Arbitration Act, 1904 which defines 'industry' thus:

"(i) Any business, trade, manufacture, undertaking or calling of employees on land or water.

English law. It is not surprising that Indian courts have been influenced by Australian decisions<sup>15</sup> in interpreting the contours of industry, although in *Bangalore Water Supply* the court has been emphatic to emphasize that statutory construction of the definition of 'industry' must be homespun even if hospitable to alien thinking.<sup>16</sup> It would be pertinent to state here that most of the decisions in India have centered around the meaning of the word 'undertaking' used in the definition. According to the Webster's Dictionary, 'undertaking' means "anything undertaken or any business, work or project which one engages in or attempts as an enterprise." The word 'undertaking' in the context of the definition has been understood to mean any business or any work or project which one engages in or attempts as an enterprise *analogous to business or trade*.<sup>17</sup> To be analogous is "to resemble in functions relevant to the subject, as between like features of two apparently different things. So, some kinship through resemblance to 'trade' or 'business' is the key to the

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- (ii) Any calling, service, employment, handicraft or industrial occupation or avocation of employees on land or water; and
  - (iii) A branch of any industry and a group of industries."

While interpreting the above definition in *Jumbunna Coa Mine, No. Liability v. Victorian Coal Miners' Association* (1908) 6 CLR 309 (370) HCA, Isaacs, J. illustrated the above mentioned terms in the definition of 'industry' to mean a 'business' (as merchant), a 'trade' (as cutler), a 'manufacturer' (as a flour miller), 'undertaking' (as a gas company), a 'calling' (as an engineer) or 'service' (as a carrier) or an 'employment' (a general term like 'calling'- embracing some of the others, and intended to extend to vocations which might not be comprised in any of the rest), all of these expressions so far indicating the occupation in which the principal...is engaged whether on land or water and then concluded that "if the occupation so described is one in which persons are employed for pay, hire, advantage, or reward, that is, as employees, then, with the exceptions stated, it is an 'industry' within the meaning of the Act."

<sup>15</sup> E.g. *Federated Engine-Drivers & Firemen's Association of Australasia v. Broken Hill Proprietary Co. Ltd.* (1912-13) 16 C.L.R. 245 (HCA); *Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation* (1918-19) 26 C.L.R. 508 (HCA); *Federated State School Teachers' Association of Australia v. State of Victoria* (1928-29) 41 C.L.R. 569 (HCA), cited with approval by the Supreme Court in *Corporation of City of Nagpur v. Its Employees*, AIR 1960 SC 675, per Subba Rao J. (*Corporation of City of Nagpur*); *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610, per Gajendragadkar, J. (*Hospital Mazdoor Sabha*); *Ahmedabad Textile Industry's Research Association v. State of Bombay*, AIR 1961 SC 484, per Wanchoo J.; *Jumbunna Coal Mine No Liability v. Victorian Coal Miners' Association*, (1908) 6 C.L.R. 309 (370) (HCA), per Isaacs, J., affirmed in *Federated Engine-Drivers and Firemen's Association of Australasia v. Broken Hill Proprietary Co. Ltd.* (1910-11) 12 C.L.R. 398 (HCA), cited with approval in *Newspapers Ltd. v. Industrial Tribunal* (1957) 11 LLJ 1 at 6 (SC), per Kapur J.; *Rangaswami v. Registrar of Trade Unions*, AIR 1962 Mad. 231, per Ramachandra Ayyar, J.

<sup>16</sup> *Bangalore Water Supply*, *supra* note 11.

<sup>17</sup> *Supra* note 1; also see *Baroda Borough Municipality v. Its Workmen*, AIR 1957 SC 110.

problem...Partial similarity postulates selectivity of characteristics of comparability.”<sup>18</sup>

The earliest case on the construction of the definition of ‘industry’ decided by the Supreme Court was *Banerji*. In this case, the court held that though the municipal activity cannot be truly regarded as ‘business’ or ‘trade’, yet the definition in ID Act includes also disputes that might arise between municipalities and their employees in branches of work that can be said to be *analogous* to carrying out of a ‘trade’ or ‘business’, though they are carried on with the aid of taxation and no immediate material gain by way of profits is envisaged. The court further held that neither the profit motive nor investment of capital is a *sine qua non* or necessary element in the modern conception of industry. Accordingly, the court held that a dispute espoused by the workers’ union regarding non-employment of a head-clerk and a sanitary-inspector in the municipality was an ‘industrial dispute’. However, the court did not elaborate as to what *analogous* to carrying out ‘trade’ and ‘business’ meant. While filling the gaps in *Banerji*, the court later or attempted an authoritative elucidation of the fluid phrase ‘*analogous to trade and business*’ in *Hospital Mazdoor Sabha*<sup>19</sup> and *Corporation of Nagpur*.<sup>20</sup> It is these twin decisions which spread the canvas wide and illumine the expression ‘*analogous to trade or business*’.<sup>21</sup>

In *Baroda Borough Municipality v. Its Workmen*,<sup>22</sup> relying on *Banerji*, the court reiterated that the branches of work that can be regarded as ‘*analogous to trad or business*’ would fall within the meaning of ‘industry’ in section 2(j) of the ID Act.

Yet another case pertaining to the activities of the municipal corporation was *Corporation of Nagpur*,<sup>23</sup> where the court had to consider whether a municipal corporation would be an ‘industry’ within the meaning of section 2(14) of the C.P. and Berar Industrial Disputes and Settlement Act, 1947.<sup>24</sup> In this Act, unlike the definition of ‘industry’ in the ID Act, the word ‘undertaking’ in the definition was qualified by the words ‘manufacturing’ or ‘mining’. Therefore, the court could not press the expression ‘undertaking’ into service. The court in this case brought municipal activity within the ambit of

<sup>18</sup> *Bangalore Water Supply*, *supra* note 11 at 243.

<sup>19</sup> *Hospital Mazdoor Sabha*, *supra* note 15, *per* Gajendragadkar J.

<sup>20</sup> *Corporation of City of Nagpur*, *supra* note 15, *per* Subba Rao J.

<sup>21</sup> *Supra* note 15 at 243.

<sup>22</sup> AIR 1957 SC 110.

<sup>23</sup> *Supra* note 15.

<sup>24</sup> Section 2(14) of the Act reads:

- “14 (a) Any business, trade, manufacturing, a mining undertaking or calling of employers;
- (b) any calling, service, employment, handicraft or industrial occupation or vocation of employees; and
- (c) any branch of industry or a group of industries.”

the word 'business' or 'trade' and a distinction was drawn between regal and municipal functions of the municipal bodies. In coming to the conclusion that municipal functions were '*analogous to trade or business*', the court observed that the activity was organised and service was rendered and they were not regal. In discerning the import of the words '*analogous to trade or business*', the court took the view that the emphasis was more on "the nature of the organised activity implicit in trade or business than to equate the other activities with trade or business."<sup>25</sup>

In *Hospital Mazdoor Sabha*, the court noted that though the words used in the definition were very wide in their import, even so its latter part purports to provide an inclusive definition. However, the court was of the opinion, that if all the words used were given their widest meaning, all services and all calling would come within the purview of the definition; even services rendered by a servant purely in a personal or domestic matter, or even in a casual way, would fall within the definition. That could not have been the intention of the legislature. Hence, domestic personnel or casual services were excluded from the definition and examples were given of such services. Although the court rejected the application of the principle *noscitur a sociis* in interpreting the words of wide amplitude used in the definition of 'industry', in reality it applied this principle to constitute the rationale of the exceptions carved out by it.<sup>26</sup> The court held that it was possible to exclude from the definition activities of the government which could be properly described as 'regal' or 'sovereign' activities, as these were functions which could and must be undertaken for governance by a constitutional government and which no private citizen could undertake. The court, however, was clear that sovereign functions could not be confused with welfare functions of the state. The court laid down that the true test to distinguish regal or sovereign functions from welfare functions was whether the activity in question could be undertaken by private individuals. Thereafter the court laid down working principles explaining the attributes of the phrase '*analogous to trade or business*', the presence of which made an activity an undertaking within section 2(j):

As a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure.

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<sup>25</sup> *Supra* note 15 at 682.

<sup>26</sup> See observations of Chandrachud, C.J. in *Bangalore Water Supply*, *supra* note 11 at 295; also see O.P. Malhotra, *The Law of Industrial Disputes*, vol. I, p. 107 (Fifth ed., 1998).

Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which section 2(j) applies.<sup>27</sup>

Applying the aforesaid test, which later on came to be described as 'triple tests', to the case at hand which related to a group of hospitals run by the state, the court held that there was no doubt that if a hospital was run by private citizens for profit or no profit would nevertheless be an 'undertaking' within the meaning of section 2(j) and merely because such activity is run by government it cannot take the activity out of the definition of 'industry'. The fact that the state did not conduct this activity for profit made no material difference. Likewise, the doctrine of *quid pro quo* had no application for determining the question as to whether an activity was 'industry' or not. The court held that it had no difficulty in holding that the state was carrying on an 'undertaking' within the meaning of the Act, when it run the group of hospitals.

In a later case,<sup>28</sup> the court held that activity of an association for research work maintained by the Ahmedabad Textile Industry and employing technical and other staff was 'industry' because it was providing material services to a part of the community with the co-operation of employees in an organised manner in which 'trade' or 'business' was organised. A fresh test, however, was added for the first time in this case that the partnership was only the association between employer and employees, as the employees had no right in the results of their labour or nature of business or trade. This case was followed by *Solicitor's case*,<sup>29</sup> which satisfied the tests so far enumerated. However, a new test was added that the association of labour must be direct and essential. On this ground, it was held that the service of a solicitor was individual depending upon his personal qualification and ability to which employees did not contribute. The contribution of the employees in the case of a solicitor's firm, it was held, had no direct or essential nexus with the advice or service rendered by the solicitor. Resultantly, the liberal professions were excluded from the scope of the definition. Thus, the court started adopting different approaches depending on the activity it was dealing with as is evident from cases that came before the court later on.

In *Hari Nagar Cane Farm v. State of Bihar*,<sup>30</sup> where a cane farm was purchased by a sugar factory and worked the same as a department for the

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<sup>27</sup> *Supra* note 18 at 616.

<sup>28</sup> *The Ahmedabad Textile Industry's Research Association v. State of Bombay*, *supra* note 15.

<sup>29</sup> *National Union of Commercial Employees v. M.R. Meher*, AIR 1962 SC 1080 (*Solicitor's case*).

<sup>30</sup> (1963) 1 LLJ 692 (SC).

agricultural operations of the firm, it was held to be 'industry' on the facts of the case, but it was made clear by the court that agriculture under all circumstances could not be called an 'industry'. In *University of Delhi v. Ram Nath*,<sup>31</sup> the court narrowed the concept of service. It held that educational institutions would not fall within the meaning of 'industry' because their aim was education and the teachers' profession was not to be equated with industrial workers. The work in the university was primarily carried on with the help of teachers who were not covered by the definition of "workman" and, therefore, educational institutions like the University of Delhi were not 'industry'.

The concept of 'industry' was thus getting blurred by the innovation of new tests in new fact- situations and, therefore, a fresh look into the matter was attempted in *Gymkhana Club*.<sup>32</sup> The court revisited the earlier decisions and in the process commented on each of them without bringing any material objectivity or uniformity in the principles laid earlier. The court in this case was faced with the question whether the activities of the Madras Gymkhana Club which was a members' club fell within the definition of 'industry'. The court, after laying down the principle as to what is 'industry', held that, though the activity of the club may be falling in the second part of the definition inasmuch as the work of the club is conducted with the aid of the employees who followed a 'calling' or an 'avocation', it could not be described as 'trade', 'business', 'manufacture' or 'calling' of the members of the managing committee of the club. It was also held that the activity of the club was not an 'undertaking' '*analogous to trade or business*' as this element was completely missing in a members' club. This non-proprietary club, therefore, was held to be not 'industry'. The tests laid down in *Gymkhana Club* were followed by the court in *Cricket Club of India v. Bombay Labour Union*.<sup>32</sup> In this case the club was incorporated as a company but in view of the fact that it was not like an ordinary company constituted for the purpose of carrying on any 'business', the court opined that the club in fact was a members' club and all services provided in the club for the members had to be treated as activities of a self-service institution.

A sharp bend in the development of law came when *Safdarjung*<sup>33</sup> was decided. Hidayatullah, C. J., after considering the facts of the cases before the court, held that hospitals were not industries. The following abbreviated reasons were given with regard to each institution:

It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can get treated. This is a

<sup>31</sup> *University of Delhi v. Ram Nath*, AIR 1963 SC 1873 (*Delhi University*).

<sup>32</sup> AIR 1969 SC 276 (*Cricket Club of India*).

<sup>33</sup> *Supra* note 12.

part of the functions of Government and the hospital is run as a Department of Government. It cannot, therefore, be said to be an industry.<sup>34</sup>

The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances the Tuberculosis Hospital cannot be described as industry.<sup>35</sup>

The objects of the Kurji Holy Family Hospital are entirely charitable. It carries on work of training, research and treatment. Its income is mostly from donations and distribution of surplus as profit is prohibited. It is, therefore, clear that it is not an industry as laid down in the Act.<sup>36</sup>

The reasons given for excluding the three institutions are hardly convincing and could not be termed as correct exposition of law. *Safdarjung* accentuated the confused position resulting from obfuscation of the basic concept of 'industry' under the ID Act. It now became more difficult to discern any golden thread running through the string of decisions bearing on the definition of industry. Ordinarily, changes in law were called for, as it is essentially the job of Parliament, to legislate in vital areas like industry and trade so that the industrial community could understand and apply the law for the smooth functioning of the industry. But that was not to be.

In this given position, the court, cognizant of the fact that further delay in clarifying the definition had led to multiplicity of litigation in the tribunals and courts and consequent partial paralysis in industrial life, on a reference to a seven judge bench of the court in *Bangalore Water Supply*,<sup>37</sup> reexamined all the earlier judgments of the court, recognizing the need to simplify and clarify the definition of 'industry', as the rulings of the court before and after *Safdarjung* had revealed neither unanimity nor struck any unison. It was, therefore, felt desirable that there should be a comprehensive, clear and conclusive declaration as to what is an 'industry' under the Act as it stood then.

Krishna Iyer J. in his characteristic style, wrote the leading and epoch making judgment in *Bangalore Water Supply*. He reviewed the earlier *dicta* on the interpretation of the wide words in the definition, "hopefully to abolish blurred edges, illumine penumbral areas" and overrule what the court regarded as wrong. Iyer J. did not discard all the tests of 'industry' formulated in the past. He actually restored the test laid down earlier in *Banerji, Corporation of Nagpur and Hospital Mazdoor Sabha*. The court made it clear that its job was

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<sup>34</sup> *Id.* at 747, para 34.

<sup>35</sup> *Id.* at 748, para 37.

<sup>36</sup> *Id.* at 748, para 38.

<sup>37</sup> *Supra* note 10.

not to spring a creative surprise on the industrial community by a stroke of freak originality but to stabilise the law on the firm principles gatherable from *Banerji* and the later decisions, rejecting erratic excursions. Iyer J. made it clear that the job of the larger bench was not to supplant the *ratio* of *Banerji* but to strengthen it in its application, away from different deviations and aberrations, with a view to narrow down the twilight zone of controversy. The basic approach that the court adopted is explained by the court itself thus:

An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture – mechanical or handicraft-based – service, employment, industrial occupation or avocation... The expression 'undertaking' cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a sociis* is a commonsense guide to construction, 'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after... From *Banerji* (supra) to *Safdarjung* (supra) and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

...Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry, no employee, no industry – not as a dogmatic proposition in economics but as an articulate major premise of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

....An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities – material goods and services, not transcendental flights nor intangible achievements – are the functional focus of industry... So we are confined to material, not ethereal end products.

.... This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable.<sup>38</sup>

After holding that the 'triple tests' laid down by the court in earlier decisions to be unexceptionable, Iyer J. then proceeded to formulate positively and negatively decisive principles for identifying 'industry' under the ID Act which are summarised hereunder:

- (a) Where (i) systematic activity, (ii) organised by co-operation between employer and employees (the direct and substantial

<sup>38</sup> *Id.* at 230-31

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 i.e. making, on a large scale, prasada or food) combine, prima facie, there is an 'industry' in that enterprise.

- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.
- (e) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. Thus all organised activity possessing the triple elements, although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to trade or business. This takes into the fold of 'industry', undertakings, callings and services, adventures 'analogous to the carrying on of trade or business'. All features, other than the methodology of carrying on the activity, viz. in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.
- (f) However, 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 *Delhi University* 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 *Corporation of Nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' may not benefit by the statute.
- (g) Applying the aforesaid tests to the specific cases, activities such as (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 (*supra*), cannot be exempted from the scope of section 2(j).
- (h) 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 employed but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

- (i) 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.
- (j) 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.
- (k) 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).

In view of the aforesaid tests laid down by it, the court had no hesitation in specifically overruling *Safdarjung, Solicitor's, Gymkhana Club, Delhi University* and other rulings whose ratio ran counter to the principles enunciated above and in rehabilitating *Hospital Mazdoor Sabha*. All the judges in *Bangalore Water Supply*, however, pleaded for legislative reform and made it clear that the judgment only sought "to serve the future hour till changes in the law or in industrial culture occur".

It may not be out of place to state here that the court in *Bangalore Water Supply* did not agree with everything that was said in *Banerji*. The court applied the rule of *noscitur a sociis* in interpreting the term 'undertaking' which had been rejected in *Banerji*. Again, the view expressed by the court in *Banerji* that charitable undertakings are not 'industry' was held to be untenable in *Bangalore Water Supply*. Except for these two aspects, it must be said that the court used *Banerji* as its mariner's compass in its judicial navigation in pursuit of culling out clear and simple tests for determining whether an activity was 'industry' or not.

The definition of the 'industry' in section 2(j) has since been amended by Industrial Disputes (Amendment) Act, 1982 and has been substituted with a

new definition.<sup>39</sup> The amended definition has, however, yet to be brought into force though other provisions of the Industrial Disputes (Amendment) Act, 1982 have been substantially brought into force. Thus, for all intents and purposes, the principles laid down in *Bangalore Water Supply* have to be applied for the purposes of resolving the disputes relating to the concept of 'industry'.

Applying the aforesaid tests laid down in *Bangalore Water Supply*, a division bench of the court has held that the project undertaken by the Government of India to rehabilitate the refugees from Pakistan is 'industry'

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<sup>39</sup> The definition of the term 'industry' as amended by the Industrial Disputes (Amendment) Act, 1982 reads as under:-

"Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are 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, and includes-
  - (a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
  - (b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include-
    - (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.  
Explanation.-For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or
    - (2) hospitals or dispensaries; or
    - (3) educational, scientific, research or training institutions; or
    - (4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
    - (5) khadi or village industries; or
    - (6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
    - (7) any domestic service; or
    - (8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or
    - (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

within the meaning of section 2(j) of the Act.<sup>40</sup> The court opined that, bearing in mind the 'dominant nature' of the project and the nature of duties discharged by the workers, this conclusion was inescapable.

In *All India Radio v. Santosh Kumar*,<sup>41</sup> a division bench of the court held that functions carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions, as they carry on commercial activities for profit by getting commercial advertisements broadcast or telecast through their various stations and kendras by charging fee. It could not be said, after perusing the Doordarshan Manual, that the functions of Doordarshan and its setup were of purely sovereign in nature. Day in and day out advertisements were being telecast and even serials telecast on payment of appropriate charges. Same was the position with All India Radio. Therefore, the court had no hesitation in coming to the conclusion that All India Radio as well as Doordarshan were industry within the meaning of the ID Act. In arriving at this conclusion, the court drew support from the judgment of a three-judge division bench in *General Manager, Telecom*<sup>42</sup> wherein the court had held that the Telecommunication Department of Government of India was an 'industry,' as it answered the 'dominant nature test'.

In *Coir Board, Ernakulam, Cochin v. Indira Devi P.S.*,<sup>43</sup> however, a division bench of two judges of the court felt that the case law on the question of 'industry' had left uncertainty and it was necessary that the decision in *Bangalore Water Supply* be re-examined by a larger bench, as it had the effect of bringing in various organisations in the fold of definition of 'industry' which, in their opinion, were quite possibly not intended to be covered by the machinery set up under the Act. The division bench felt that it might have done more damage than good not merely to the organisations but also to the employees by the curtailment of employment opportunities. It also felt that the need to re-examine the judicial decisions on the subject was also necessitated by the fact that the notification bringing into effect the 1982 amendment to section 2(j) of the ID Act had not been issued by the executive so far. It is submitted that the sweeping observations of the division bench of the court that

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<sup>40</sup> *Dandakaranya Project Koreput v. Workmen* (1997) 2 SCC 296 per Ramaswamy J. (decided on 2.2.1996 by a division bench comprising of S. C. Agrawal and G.B. Pattanaik, JJ.).

<sup>41</sup> (1998) 3 SCC 237 (decided on 5.2. 1998 by a division bench comprising of S.B. Majmudar and M. Jagannadha Rao, JJ.).

<sup>42</sup> *General Manager, Telecom v. A. Srinivasa Rao* (1997) 8 SCC 767 per J.S. Verma, C.J.; decided on 18.11.1997 by a division bench comprising of J.S. Verma, C.J., B.N. Kirpal & V.N. Khare, JJ. (*General Manager, Telecom*).

<sup>43</sup> (1998) 3 SCC 259, a division bench consisting of Sujata V. Manohar & D.P. Wadhwa, JJ directed that the matter be placed before the Chief Justice to decide as to whether a larger bench should be constituted to reconsider the decision of seven judge bench in *Bangalore Water Supply* on the interpretation of the definition of 'industry' under section 2(j) of the I.D. ACT, 1947.

the decision in *Bangalore Water Supply* might have done more damage than good are not based on any study or research.<sup>44</sup> The court in the instant case had to decide whether the Coir Board which had been set up to promote coir industry, open markets for it and provide facilities to make coir industry products more marketable, was 'industry' within the meaning of the ID Act. It opined that although Coir Board is not set up to run any 'industry' itself, yet if one were to apply the test laid down in *Bangalore Water Supply*, it would be covered by the definition of 'industry' as the organisation did useful work for the benefit of others. According to the division bench, it did not appear that such a sweeping test was contemplated by the ID Act. So also, it was not possible to hold that every organisation, which provided useful service and employed people could be labelled as 'industry'. In these circumstances, it directed that the matter be placed before the Chief Justice of India to consider whether a larger bench should be constituted to reconsider the decision in *Bangalore Water Supply*. Subsequently, a three judge bench headed by the Chief Justice opined that the judgment delivered by the seven judge bench of the court in *Bangalore Water Supply* did not require any reconsideration on the reference being made by the two judge bench of the court which was bound by the judgment of the larger bench.<sup>45</sup> The court, therefore, directed that the appeal in *Coir Board, Ernakulam* be listed before the appropriate bench for further proceedings.

### III. 'SOVEREIGN FUNCTION': JUDICIAL INTERPRETATION

Sovereign functions are primary inalienable functions, which only the state can exercise. The defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory, taxation, maintenance of law and order, internal and external security, grant of pardon are illustrations of sovereign function. The other functions of the state, including welfare activities, cannot be construed as sovereign exercise of power. Various functions of the state may be ramifications of sovereignty but all cannot be construed as primary inalienable functions. Every governmental function need not necessarily be sovereign. State activities are multifarious. The dichotomy between sovereign functions can be found by finding out which of the functions of state could be undertaken by any private person or body; the one which could be undertaken cannot be a sovereign function. In a given case even on subjects on which the state has the monopoly may also be non-sovereign in nature. Absence of profit motive or mere *quid pro quo* would not take the enterprise out of the ambit of 'industry'. In fact the ID Act in terms

<sup>44</sup> See Bushan Tilak Kaul, "Labour Law-I (Industrial Relations Law)", XXXIII-XXXIV, *Annual Survey of Indian Law* (1997-98) 433 at 433-37.

<sup>45</sup> *Supra* note 10

contemplates cases of 'industrial disputes' where the government or the local authority or the public utility service may be employer.

In view of the expanding activities of the state, the industrial adjudication machinery here, like elsewhere, had to deal with the concept of 'regal' and 'sovereign functions' in the new perspective, while interpreting the ambit of the term 'industry' under the ID Act. Isaacs J. of the High Court of Australia in his dissenting judgment in the *Federated State School Teachers Association, Australia v. State of Victoria*<sup>46</sup> concisely stated thus:

Regal functions are inescapable and inalienable. Such are the legislative powers, the administration of the laws, the exercise of the judicial power.<sup>47</sup>

This position of law clearly spells out the ambit of regal functions as distinguished from other powers of the state. In *Corporation of Nagpur*,<sup>48</sup> the Supreme Court, relying upon the aforesaid legal position stated by Isaacs J., made it very clear that it could not have been in contemplation of the legislature to bring in the regal functions of the state within the definition of 'industry' and thus confer jurisdiction on industrial tribunals to decide disputes in respect of them. Thus those activities of the government which can be properly described as 'regal' or 'sovereign functions' have, therefore, come to be recognised as outside the scope of 'industry' under the ID Act. However, the court has not followed a consistent approach with respect to defining the legal contours of sovereign and regal functions. There are visible zigzags discernible in the judgments of the court while deciding whether a particular function of the state is a sovereign or a non-sovereign function.

The court had an occasion to deal with the question of sovereign functions in *Hospital Mazdoor Sabha*.<sup>49</sup> To resolve the issue, the court adumbrated the test: Can such activity be carried on by a private individual or group of individuals? This test was reiterated by Subba Rao, J. in *Corporation of Nagpur*. But this test was later on rejected by Hidayatulla J. in *Gymkhana Club* with the following observation:

This test...is not enlightening because there is hardly any activity which private enterprise cannot carry on. Even war can be financed and waged by commercial houses. They manufacture ammunition and war equipment and can carry on war with mercenaries.... Even the infrastructure of Adam Smith can be provided by private enterprise. The East India Company did both.<sup>50</sup>

<sup>46</sup> (1928-29) 41 CLR 569 (576-590) (HCA), *per* Isaacs J.

<sup>47</sup> *Id.* at 585.

<sup>48</sup> *Supra* note 15

<sup>49</sup> *Supra* note 15

<sup>50</sup> *Supra* note 11 at 559.

The same judge subsequently held that Safdarjung Hospital was not an 'industry' as the hospital was a department of the Ministry of Health & Welfare, Government of India. The obvious consequence of this holding in *Safdarjung*<sup>51</sup> was that any activity carried on by the government, whether regal or non-regal, would be *de-hors* the definition of 'industry'. In *Safdarjung*, the court also held that *Hospital Mazdoor Sabha* was wrongly decided and consequently overruled the said decision.

The court, notwithstanding the aforesaid observations of Hidayatulla, J. in *Safdarjung*, pursued the test earlier evolved by it in *Hospital Mazdoor Sabha* and reiterated the same in *Corporation of Nagpur, in Workman of Indian Standard Institution v. Management of Indian Standard Institution*<sup>52</sup> when it held that Indian Standard Institution run by the Government of India was an 'industry'.

In *Bangalore Water Supply*, the court was not directly concerned with the categories of employees who came under the department charged with the responsibility for essential constitutional functions of the government. But since the court was constituted to review all its earlier judgments, it observed that sovereign functions, strictly understood, alone qualified for exemption, not the welfare activities or economic adventures undertaken by the government or statutory bodies. Even in departments discharging sovereign functions, if there were units which were industry and substantially severable, then they could be considered to come within the definition of industry in section 2(j).<sup>53</sup>

In the result, in *Bangalore Water Supply*, the court held that *Safdarjung* was wrongly decided. The court overruled it and rehabilitated *Hospital Mazdoor Sabha*.

In *Chief Conservator of Forest v. Jaganath Mart Kundre*,<sup>54</sup> the court observed that the dichotomy of the levels such as sovereign and non-sovereign, or regal or non-regal, or state functions or non-government functions, really did not exist. Therefore, to extend the concept of sovereign functions to include all welfare activities would erode the ratio of *Bangalore Water Supply*. Hence, except the strictly understood sovereign functions, other activities of the state such as welfare activities would fall within the purview of the definition 'industry'. Not only this, even within the wider circle of the sovereign functions there may be an inner circle encompassing some units which could be considered as 'industry', if substantially severable.

These two decisions not only brought the non-regal functions of the state back into the ambit of industry, but applied the doctrine of severability even to

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<sup>51</sup> *Supra* note 12.

<sup>52</sup> *Workmen of Indian Standards Institution v. Indian Standards Institution*, (1975) 2 SCC 847.

<sup>53</sup> *Supra* note 15 at 248.

<sup>54</sup> AIR 1996 SC 2898 (A.M. Ahmadi, C.J., B.L. Hansaria & S.C. Sen, JJ.).

the departments of the state discharging regal functions.<sup>55</sup> However, from the decisions that came immediately after the judgment in *Chief Conservator of Forest*, one again discerns deviations in the approach of the court from the well-set course that it followed earlier to *Safdarjung* and thereafter. In *Sub-Divisional Inspector of Posts, Vaicam v. Theyyam Joseph*<sup>56</sup>, a two judge bench of the court held that functions of the postal department of the government are part of the sovereign functions of the state and it is, therefore, not 'industry' within the meaning of section 2(j) of the ID Act. It is pertinent to state here that the court, in this case, did not advert to its holding in *Bangalore Water Supply*. However, in *Bombay Telephone Canteen Employees Association v. Union of India*<sup>57</sup>, while dealing with the question as to whether the Telecommunication Department of the Government of India was an 'industry' within the meaning of section 2(j), another two judge bench presided over by the same judge (K. Ramaswamy, J.) did notice *Bangalore Water Supply* but deviated from the 'dominant nature test' with the following observations:

[T]he consequence is catastrophic and would give a carte-blanc power with laissez faire legitimacy which was buried fathom's deep under the lethal blow of Article 14 of the Constitution which assures to every person, just, fair and reasonable procedure before terminating the services of an employee.<sup>58</sup>

The bench held that the Telecommunication Department of the Government of India was not an 'industry' within the meaning of section 2(j) of the ID Act.

These two decisions were, however, subsequently overruled by a three judge bench of the court in *General Manager, Telecom*.<sup>59</sup> In this case, the court was dealing with the same issue : Whether the telecommunication department was an 'industry'. The court observed that since the definition of 'industry' substituted by the amendment Act, 1982 for the original definition had not been brought into force by issuing a notification required for the purpose, the law stated by it in *Bangalore Water Supply* which was decided by a larger bench held the field. Therefore, while holding that telecommunication department answered the 'dominant nature test', the court observed that as a matter of judicial discipline it was not permissible for a smaller bench to take a view contrary to the law settled by the seven judge bench in *Bangalore Water Supply* which had held the field for nearly two decades.

In an earlier case, a two judge bench in *Desh Raj v. State of Punjab*,<sup>60</sup> by applying the 'dominant nature test', had held that on the facts of that case the

<sup>55</sup> O.P. Malhotra, *The Law of Industrial Disputes*, supra note 26 at 120.

<sup>56</sup> AIR 1996 SC 1271 (K. Ramaswamy & G.B. Pattanaik, JJ.).

<sup>57</sup> (1997) 6 SCC 723 (K. Ramaswamy and D.P. Wadhwa, JJ.).

<sup>58</sup> *Id.* at 737.

<sup>59</sup> *Supra* note 42.

<sup>60</sup> (1988) 2 SCC 537.

irrigation department clearly came within the ambit of 'industry'. But in a subsequent case where the question was whether irrigation department of the state government was an 'industry', another two-judge bench of the court held that irrigation department was 'regal function' and, therefore, not an 'industry'.<sup>61</sup> One hoped that the court would adopt an approach consistent with *Bangalore Water Supply* but judicial vacillation is clearly discernible in this case. It seems the attention of the court was not drawn to its earlier decisions. It has been rightly opined that the law laid down in *Desh Raj* was correct and sustainable on the rationale of the holding of the three judge bench of the court in *General Manager, Telecom*.<sup>62</sup>

Again, the correctness of the decision in *Himanshu Kumar Vidyarthi v. State of Bihar*<sup>63</sup> that when the appointments in government departments are regulated by the statutory rules, the concept of 'industry' to that extent stood excluded, was not free from doubt. In this case, the petitioners who were appointed on daily wages as assistants, drivers and peons in Cooperative Training Institutes under the State Governments were disengaged. They contended that they were retrenched from service in violation of section 25F of the ID Act. The court held that disengagement of casual workers from service did not amount to 'retrenchment'. This finding of the court could not be faulted. But the finding that the government department in question was not 'industry' under the Act merely because recruitment to services was regulated by statutory rules was not consistent with the principles laid down by the Constitution Bench in *Bangalore Water Supply* that a government department which fulfilled the triple test and was not performing sovereign functions strictly was 'industry' within the meaning of the Act.

In *Physical Research Laboratory v. K.G. Sharma*,<sup>64</sup> the question that arose for determination was whether Physical Research Laboratory ('PRL'), a public trust registered under the Bombay Public Trust Act, 1950, dedicated to research in space and allied sciences, was 'industry' within the meaning of the ID Act. PRL was financed mainly by Department of Space, Government of India with nominal contribution from Government of Gujarat and two educational institutions. Assailing the award of the labour court before the Supreme Court PRL raised the following arguments in support of its appeal:

- (a) It was virtually an institute falling under the Department of Space, Government of India's engaged in carrying on fundamental research regarding the origin and evolution of the universe and atmosphere of earth which was more in the nature of governmental or sovereign function;

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<sup>61</sup> *Executive Engineer, State of Karnataka v. K. Somasetty* (1997) 5 SCC 434 (K. Ramaswamy & D.P. Wadhwa, JJ.).

<sup>62</sup> *Supra* note 42 at 121.

<sup>63</sup> *Ibid.*

<sup>64</sup> (1997) 4 SCC 257 (K. Ramaswamy & G.T. Nanavati, JJ.).

- (b) it was not directly or indirectly carrying on any trade or business and its activities did not result in production or distribution of goods or services calculated to satisfy human wants and wishes; and
- (c) the knowledge acquired as a result of the research carried on by it was not sold but was utilized for the benefit of Government.

The court held that although PRL was carrying on the activity of research in a systematic manner with the help of its employees, yet its object was not to render services to others, nor in fact does so except in an indirect manner. Holding that PRL was not an 'industry', the court ruled that it was more an institution discharging government function and a domestic enterprise than a commercial enterprise.

It a recent case,<sup>65</sup> the core question before the court was whether the appellant, a market committee, established under the Karnataka Agricultural Produce Marketing Regulations Act, 1966 was exercising sovereign functions, the answer to which question depended upon the nature of the power conferred on the committee and the manner of its exercise. To arrive at the correct decision, it became necessary for the court to examine the whole of the statute. The court observed that even if a statute conferred on a statutory body any function which could be construed to be sovereign in nature, it did not mean that every other function under the same statute was also to be sovereign. In interpreting any statute to find if the body created under it was 'industry' or not, the courts must find the *pith and substance* of the statute. Since the ID Act was enacted to maintain harmony and industrial peace between the parties, i.e. the employer and workman, the endeavour of the court should not in all circumstances be to exclude any enterprise from the ambit of the Act. That was why courts had been defining 'industry' in the widest permissible limits and 'sovereign functions' within a limited orbit.

The court observed that it was true that various functionaries under the state Act were creatures of the statute but the creation by itself could not confer on it the status of performing inalienable functions of the state. The main controlling function and power under the statute was conferred on the market committee whose constitution itself revealed that all the members, except one or two, were elected members representing some or the other class from the public. Even if some of the functionaries under the state Act could be said to be performing sovereign functions of the state, that by itself did not make the dominant object of the committee to be sovereign in nature or take the state Act out of the purview of the ID Act. Thus, merely because an enterprise was a statutory corporation, a creature of a statute, it did not fall outside the ambit of 'industry' under the ID Act. It was therefore held that the present case did not

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<sup>65</sup> *Agriculture Produce Marketing Committee v. Ashok Harikuni* (2000) 8 SCC 61 (A.P. Mishra & Y.K. Sabharwal, JJ.).

fall under any of the exceptions laid down under the *Bangalore Water Supply*. The very definition of the 'appropriate government' indicated that even the legislature intended a very large number of enterprises to be 'industry' to confer benefit to the employees working in them. The court pointed out that several corporations covered by the ID Act were also clothed with statutory powers curtailing individual rights, through levy of demurrages, detention charges in the warehousing corporation, eg. under the Warehousing Corporation Act; regulation of entry into airport, ATC levy and regulation of taxes and fees by the International Airport Authority; assessment, and levy of damages as well as penalties by authorities under the Employees State Insurance Act and the Employees Provident Fund Act. Though each of the aforesaid corporations and statutory bodies was 'industry', the feeble submission that curtailment of right of an individual could only be by exercise of sovereign power had no merit.

On scanning the whole of the state Act and perusal of preamble and the statements and objects, the court held, that the Act dealt with various facets of regulating activities within the market area with respect to trading in agricultural produce. It included establishment of various committees, including for charging of fees for service rendered to the traders of the agricultural produce. It was held that any enactment, scheme or project which provided help in the trading activity was one of the state's essential functions towards welfare activity for the benefit of its subjects. Such activities could be undertaken even by any non-governmental organisation or a private person, corporate body or company. The court referred to the position prevailing prior to the abolition of the *zamindari* when the *hats* and *bazars* (markets) were held on *zamindar's* (landowner) land for which *zamindar* used to charge fee for rendering service for holding such market, by providing land and facilities to the participants of such market. By this it, helped the producers, sellers and the public at large through trading. This is similar in nature and form to what was being done now under the state Act through statutory functionaries. None of these functions could be construed to be of sovereign in nature or inalienable in character. The predominant object of such legislation clearly was to regulate and control trading of agricultural produces. The appellant committee including its functionaries could, therefore, not be said to be performing functions which were sovereign in character as most of its functions could be undertaken even by private persons.

#### IV. CONCLUSION

Judicial interpretation of the definition of 'industry' subsequent to *Hospital Mazdoor Sabha* and *Corporation of Nagpur* had the effect of frustrating the dual goals underlying the ID Act, viz. contentment of workers and peace in 'industry' which are essential for achieving higher productivity. The court in *Bangalore Water Supply* felt it desirable to lay down through judicial interpretation clear and broad principles to interpret this term in the absence of

legislative changes which were not forthcoming. This was done with a view to stimulating industrial harmony and cooperation between employer and workmen for the overall good of the society. The court neither rejected everything ruled earlier nor did it fabricate new tests but only rejected erratic excursions. The decision of the court in *Bangalore Water Supply* and consistent application of the tests laid down in it over the period made one to believe that these tests had stood the test of time and internalized by all concerned. But there have been disturbing trends discernible in some of the decisions of the court. The smaller benches of the court have either not referred to or have misconstrued the tests laid down in *Bangalore Water Supply*. But the decision in *General Manager, Telecom* has for the time being restored the position of pride to *Bangalore Water Supply* by emphasizing the importance of judicial discipline and overruling two of its earlier decisions which *ex-facie* were inconsistent with the principles laid down in *Bangalore Water Supply*. The view of the division bench that *Bangalore Water Supply* required reconsideration was not supported by any research or study and, therefore, misplaced. It is submitted that changes, if any, required in the tests laid down in *Bangalore Water Supply* should come by a legislative measure. A three judge division bench of the court headed by the Chief Justice had rightly opined that judgment delivered by a seven judge bench of the court in *Bangalore Water Supply* did not require reconsideration on a reference made by a two- judge bench of the court which was bound by the judgment of the larger bench. The court noted that *Bangalore Water Supply* was decided two decades ago and the law had since been amended pursuant to that judgment, though the date of enforcement of the amended law had not been notified. This opinion of the bench has two salient features, namely, (i) it emphasises the importance of judicial discipline and (ii) it supports the view that any changes in the principles laid down in *Bangalore Water Supply* have to come through a legislative measure only. After the *Bangalore Water Supply*, the court has seen, by and large, enough justification for defining 'industry' in the widest permissible limits and sovereign function within its limited orbit so that in the new millennium economic justice is made available to all, if the society has to remain wedded to democratic socialism.