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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3495/2015 & CM APPL. 6250/2015**

UOI ..... Petitioner

Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

RAJU KUMAR SHAH ..... Respondent

Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

\+ **W.P.(C) 3496/2015 & CM APPL. 6252/2015**

UOI ..... Petitioner

Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

RAMA KANT ..... Respondent

Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

\+ **W.P.(C) 3497/2015 & CM APPL. 6254/2015**

UOI ..... Petitioner

Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

DHEERAJ KUMAR ..... Respondent

Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

+ **W.P.(C) 3498/2015 & CM APPL. 6256/2015**

UOI ..... Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANTOSH KUMAR ..... Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

+ **W.P.(C) 3499/2015 & CM APPL. 6258/2015**

UOI ..... Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANDEEP KUMAR ..... Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

+ **W.P.(C) 3536/2015 & CM APPL. 6294/2015**

UOI ..... Petitioner
Through : Mr. Amit Mahajan, CGSC with
Ms. Siddharth Das, Adv.

versus

SANJEEV KUMAR ..... Respondent
Through : Mr. S.K. Bhattacharya,
Ms. Seema Sharma and
Ms. Nandita Talukdarr, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

% 20.01.2020

1. These writ petitions assail awards, dated 1st April, 2014, passed by the learned Central Government Industrial Tribunal (hereinafter referred to as "learned Tribunal") in ID Nos. 104/2012, 105/2012, 106/2012, 107/2012, 108/2012 and 109/2012.

Facts

2. The respondents, who claimed to be workmen employed with the petitioner (the Controller General of Patents, Designs and Trade Marks), and were rendering services for the petitioner, were suddenly disengaged on 31st March, 2009.

3. The respondents initially moved the learned Central Administrative Tribunal (hereinafter referred to as "the learned CAT"), by way of Original Applications (OAs) which were, however, not maintainable. Subsequently, the respondents withdrew the said OAs and raised industrial disputes, which were referred to the Conciliation Officer, as the petitioner contested the claims. On the expiry of 45 days from the date of moving the Conciliation Officer, the respondents filed their claims, before the learned Tribunal under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act").

4. By the impugned awards – which are, in sum and substance, identical – the learned Tribunal has directed reinstatement of the respondents, by the petitioner, with 40% of their last drawn wages, as back wages, payable to them.

5. Aggrieved thereby, the petitioner has approached this Court.

The impugned award

6. The learned Tribunal has delineated the following issues, as arising for its consideration, based on the rival stands, before it, by the petitioner and the respondents:

> "(1) Whether management is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947?
>
> (2) Whether the claimant is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947?
>
> (3) Whether orders dated 21.04.2010 passed by Central Administrative Tribunal operates as *res judicata*?
>
> (4) Whether claimant rendered continuous service of 240 days as contemplated by section 25B of the Industrial Disputes Act, 1947?
>
> (5) Whether the claimant is entitled to relief of reinstatement in service?"

7. Issue No. (3), as framed by the learned Tribunal, is not of significance, and learned counsel, too, have, advisedly not urged any contention thereon. Inasmuch as the OAs before the learned Central Administrative Tribunal had been preferred by the respondents under a

mistaken impression of law, and the OAs were withdrawn, without any *res* having been decided, it is obvious that the proceedings before learned Tribunal could not be said to be barred by *res judicata*.

8. I do not, therefore, propose to advert to this issue hereinafter.

9. All the issues, as framed by it, were answered by the learned Tribunal, in favour of the respondents and against the petitioner.

10. Regarding issue No. (1), i.e. as to whether the petitioner, i.e. the Controller General of Patents, Designs and Trade Marks (hereinafter referred to as "the Controller General"), was an 'industry' as defined in Section 2(j) of the ID Act, the learned Tribunal has, essentially, based its decision on the classic exposition, by the seven-judge Constitution Bench of the Supreme Court in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa***[1].

11. The learned Tribunal has reproduced paras 140 to 144, from the decision in ***Bangalore Water Supply***[1] (in which the Supreme Court has "formulated the principles" emerging from its decision), in this regard. For the sake of contextual clarity, I deem it appropriate to reproduce paras 139 to 144 of the report, thus:

> "**139.** ***Banerji***[2], amplified by ***Corporation of Nagpur***[3] in effect met with its Waterloo in ***Safdarjung***[4]. But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built-in ambivalence. It behaves us, therefore, hopefully to abolish blurred edges,

[1] **(1978) 2 SCC 213**
[2] **D. N. Banerji v. P. R. Mukherjee, 1953 SCR 302: AIR 1953 SC 58: (1953) 1 LLJ 195**
[3] **The Corporation of The City of Nagpur v. Its Employees, AIR 1960 SC 675**
[4] **Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735: (1970) 2 LLJ 266**

illumine penumbral areas and overrule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote employment through diverse strategies which need for their smooth fulfillment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of 'industry' under the Act. We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch.

I

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

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

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

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

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

II

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

> "(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in ***Banerji***[2] and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the carrying on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy."

III

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

> "(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).
>
> (b) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in

minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project."

IV

143. The dominant nature test:

"(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the ***University of Delhi***[5] case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the ***Corporation of Nagpur***[3] will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

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

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

[5] **University of Delhi v. Ramnath, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335**

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

V

144. We overrule ***Safdarjung***[4]***,Solicitors' case***[6], ***Gymkhana***[7], ***Delhi University***[5], ***Dhanrajgirji Hospital***[8] and other rulings whose ratio runs counter to the principles enunciated above, and ***Hospital Mazdoor Sabha***[9] is hereby rehabilitated."

12. Based on the afore-extracted decision in ***Bangalore Water Supply***[1], the learned Tribunal holds, in para 14 of the impugned award, thus:

"14. …. An 'industry', thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into 'industry' if other tests are not satisfied."

13. Thereafter, the learned Tribunal has proceeded to examine the merits of the submission, advanced before it, on behalf of the petitioner, that it was discharging sovereign functions.

14. The learned Tribunal observes that the concept of regal, or sovereign functions, of the State, had, over the years, acquired a definite

[6] **National Union of Commercial Employees v. M. R. Meher, 1962 Supp 3 SCR 157**
[7] **Secretary, Madras Gymkhana Club Employees Union v. Management of the Gymkhana Club, (1968) 1SCR 742: AIR 1968 SC 554**
[8] **Dhanrajgiri Hospital v. Workmen, (1975) 4 SCC 621: 1975 SCC (L & S) 342**
[9] **State of Bombay v. Hospital Mazdoor Sabha, (1960) 2 SCR 866: AIR 1960 SC 610: (1960) 1 LLJ 251**

connotation, viz. "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". The learned Tribunal holds, therefore, that only such activities, of the Government, which could "be appropriately described as regal or sovereign activities" fell outside the pale of definition of 'industry' as contained in Section 2(j) of the ID Act.

15. The learned Tribunal notes the observations, in ***Hospital Mazdoor Sabha***[9]**,** that "if a business or activity could not be carried on by a private individual or group of individuals**,** it could not be an industry; while if it could be, it might fall within the scope of 'industry'". This test, it is noted, was reiterated in ***Corporation of City of Nagpur***[3].

16. The learned Tribunal, thereafter, notes the following passage from ***Bangalore Water Supply***[1], on which reliance was placed, by the Supreme Court, in ***Physical Research Laboratory v. K. G. Sharma***[10]:

> "113. Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and. other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price if the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most, inventors, he did not have to wait to get his reward in heaven; he received it

[10] **(1997) 4 SCC 257**

> munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

17. Following on the aforesaid, the learned Tribunal has chosen to return the following findings on Issue No. (1), as framed by it:

> "18. In the light of the above legal proposition, facts of the present controversy are to be scanned. Admittedly, the functions performed by the management do not fall within the ambit of administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of the State. Activities carried out by the management cannot be described as regal or sovereign activities, since such activities could be carried out by private individuals or group of individuals,
>
> 19. As projected; by the management, it grants patents on .new non-obvious 'inventions, which act answers ingredients of rendering service to the community at large. Its activities are systematic, performed with co-operation between the management and its employees, Activities performed by the management renders service to the community at large. Therefore, it is evident that the triple test of industry as propounded in ***Bangalore Water and Sewerage Board***[1] stand satisfied in the present case. It does not lie in the mouth of the management to claim that it is' does not fall within the ambit of 'industry' as defined in section 2(1) of the Act, Mere absence of profit motive will not necessarily push the activity out of the pale of industry, as defined by the Act, Resultantly. it is concluded that activities performed by the management falls , within the ambit of "industry" as defined under section 2(j) of the Act."

18. Issue No.(2), as framed by the learned Tribunal, was as to whether the respondents could claim to be "workmen", as defined in Section 2(s) of the ID Act.

19. It was observed, by the learned Tribunal, in this regard, that the respondents had, in their affidavits-in-evidence, filed before it, deposed that they had been engaged as casual labour/daily wagers, with effect from various dates in 2006 and 2007, and had served the petitioner for 240 days during the period of one year immediately preceding their date of disengagement. The learned Tribunal has, thereafter, reproduced the definition of "workman" as contained in Section 2(s) of the ID Act, and has observed that, in order for an employee in an industry to be eligible to the regarded as "workman", as defined in the ID Act, it was manifest that he had to be employed "to do skilled or unskilled manual work, supervisory work, technical work, or clerical work". Inasmuch as the respondents had been engaged as casual labourers, to do manual unskilled work, which fact was not disputed by the petitioner, the learned Tribunal goes on to hold that the nature of duties performed by the respondents itself entitled them to be regarded as "workmen", as defined in Section 2(s) of the ID Act.

20. Regarding issue No.(4), i.e. as to whether the respondents fulfilled the requirement of continuous service of 240 days, or more, in the period of one year preceding their date of disengagement, the learned Tribunal has initially placed reliance on the judgment of the Supreme court in ***Viney Kumar Majoo v. State***[11], observing that the said decision held that

[11] **1968 SCC OnLine Raj 5**

the aforesaid period of one year furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the ID Act. Accordingly, the learned Tribunal holds, it was required to examine whether the respondents had, during the period of twelve months, immediately preceding their days of disengagement, "actually worked" with, or for, the petitioner for 240 days, or more. In computing the number of days "actually worked", the learned Tribunal, relying on the judgment of the Supreme Court in ***Workmen v. American Express International Banking Corporation***[12] observed that the days "actually worked" could not be restricted only to days when the workmen worked with hammer, sickle or pen but had necessarily to include all days during which he was in the employment of the employer and for which he had been paid wages. As such, it was observed, Sundays and holidays were also includible in the number of days during which the workman/workmen "actually worked" for the management. This decision, it was noted, was followed, by the Supreme Court in ***Standard Motor Products of India Ltd. v. A. Parthasarathy***[13]**.**

21. Proceeding thus, the learned Tribunal holds that the respondents had, in fact, served the petitioner for over 240 days during the period of twelve months immediately preceding their disengagement, i.e. immediately preceding 31st March, 2009. Para 42 of the impugned award, which returns this finding, reads as under:

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[12] **(1985) 4 SCC 71: (1985) 2 LLJ 539**
[13] **(1986) 1 LLJ 34**

> "42. The claimant unfolds that he was initially engaged by the management on 04.08.2006 as daily wager. He continuously performed his duties till 31.03.2009. He rendered continuous service with the management for the period referred above. On this issue, Ms. Suresh Singhal projects that the claimant was engaged at different intervals, which spells have been reproduced in chart Ex.MW1/5. According to her, Sundays and holidays were not counted while reckoning period for which claimant worked with the management. When Ex.MW1/5 is scanned, it came to light that in preceding 12 months from 31.03.2009, the date when his services were dispensed with, claimant had rendered continuous service of 252 days. He had rendered 201 days service in preceding 12 months from April 2008. Period of service, rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in the year reckoned from April 2008 to March 2007, he reaches notional figure of 240 days, to claim continuous service for a period of one year. Thus the claimant could show that he served for a period of two years continuously, as contemplated by provisions of section 25B of the Act. Issue is, therefore, answered in favour of the claimant and against the management."

22. On Issue No. (5), as framed by the learned Tribunal, i.e. as to whether the respondents were entitled to reinstatement, the learned Tribunal holds that, in view of the admission, by Ms. Suresh Singhal, who was cited by the petitioner as its sole witness, that the respondents were, in fact, engaged by the petitioner, albeit at intervals, and had been disengaged with effect from 30th March, 2009, and in view of the fact that the petitioner had not chosen to contend that the respondents were aware that their engagement was for a specific period and would come to an end on expiry thereof, the disengagement of the respondents amounted to "retrenchment", as defined in clause (oo) of Section 2 of the ID Act. It

is subsequently found, in this regard, that sub-clause (bb) of clause (oo) of Section 2 of the ID Act, would not apply in such circumstances.

23. As it was admitted, by the petitioner, that one month's pay, in lieu of the retrenchment of the respondents, as also retrenchment compensation, were not paid to them prior to their disengagement, the learned Tribunal holds that the "retrenchment" of the respondents infracted Section 25F of the ID Act.

24. It is also observed, by the learned Tribunal, that as the respondents had been engaged through the Employment Exchange, they could not be treated as back door entrants.

25. Following on the aforesaid observations and findings, the learned Tribunal has, as noted in para 4 hereinabove, directed reinstatement of the respondents with 40% of their last drawn wages as back wages for the period after their disengagement by the petitioner.

Proceedings before this Court

26. Aggrieved by the aforesaid award, the petitioner has invoked the jurisdiction vested in this Court by Article 226 of the Constitution of India.

27. During the pendency of these proceedings, before this Court, operation and implementation of the impugned award, dated 1st April, 2014, has been stayed by this Court, and the back wages as awarded,

stands deposited in this Court, pursuant to the orders passed by this Court in these writ petitions.

Rival submissions

28. The petitioner, represented by Mr. Amit Mahajan, learned Senior Standing Counsel, has, essentially, contended that the proceedings, before the learned Tribunal were, *ab initio*, without jurisdiction, as the petitioner could not be regarded as an 'industry'. It is contended that the petitioner was discharging sovereign functions, which could not be analogised to the carrying on, of any trade or business, relating to production or distribution of goods or providing of services for satisfying human wants. Grant of patents, Mr. Mahajan submits, is, statutorily, a sovereign duty, which cannot be outsourced or entrusted to any private entity, thereby rendering the said function, sovereign. Sovereign functions, Mr. Mahajan points out, stand, even by ***Bangalore Water Supply***[1], excluded from the ambit of the definition of 'industry', as contained in Section 2(j) of the ID Act.

29. Mr. Mahajan submits that, even while acknowledging the position, in law, that entities discharging sovereign functions were not 'industry', within the meaning of Section 2(j) of the ID Act, the learned Tribunal has erroneously, in para 18 of the impugned award, restricted the understanding of "sovereign functions" to administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers of State. Equally erroneous, Mr. Mahajan would seek to submit, is the finding, of the learned Tribunal, that the activities performed by the petitioner could be carried

out by private individuals or groups of individuals. In this context, Mr. Mahajan draws my attention to the provisions of the Patents Act, 1970, whereunder the right to grant patents has exclusively been conferred on the Government. The said function, Mr. Mahajan would therefore submit, cannot be exercised by private individuals, as the learned Tribunal has erroneously concluded. Per sequitur, submits Mr. Mahajan, the petitioner could not be regarded as 'industry', the functions being discharged by it being fundamentally sovereign in nature.

30. Mr. Mahajan further relies on the judgement of the Constitution bench of the Supreme Court in ***State of Karnataka v. Uma Devi***[14]. In any event, submits Mr. Mahajan, in the absence of any finding that vacancies existed, or that juniors had been appointed in place of the respondents, the learned Tribunal ought not to have directed their reinstatement.

31. Mr. S. K. Bhattacharya, learned counsel for the respondents contends, *per contra*, that only such sovereign functions which were "essential", such as administration of law and justice, security of borders, etc., stood excluded from the province of the ID Act, and not ordinary functions discharged by the Government, even if they were, statutorily, so conferred. Mr. Bhattacharya has also advanced a preliminary objection to the very maintainability of the present writ petition, stating that the petitioner would be maintainable, if at all, under Article 227 of the Constitution of India, and would not lie either under Article 226, or under Article 226 read with Article 227 of the Constitution of India. He places reliance, for this proposition, on the judgements of the Supreme Court in

[14] **(2016) 4 SCC 1**

Radhey Shyam v. Chhabi Nath[15], ***Sadhna Lodh v. National Insurance Company***[16], ***Jogendrasinghji Vijaysinghji v. State of Gujarat***[17], ***Dr (Mrs) Sushma Sharma v. State of Rajasthan***[18] and ***New Meneckchowk Spinning & Weaving Co. Ltd v. Textile Labour Association, Ahmedabad***[19]**.**

32. Mr. Bhattacharya further contends that a specific submission had been advanced, before the learned Tribunal, that juniors, to the respondents, had been retained in service. In fact, submits Mr. Bhattacharya, submits that, even as on date, casual labourers were being engaged by the petitioner. In these circumstances, he submits, no exception could be taken, to the direction, issued by the learned Tribunal, for reinstatement of the respondents.

Analysis

33. I proceed to deal, first, with the merits of the challenge raised by the petitioner.

Re. jurisdiction of the learned Tribunal

34. It has been vociferously contended, by Mr Mahajan, that the learned Tribunal was *coram non judice*, as the petitioner is not an 'industry' within the meaning of Section 2(j) of the ID Act.

[15] **(2015) 5 SCC 423**
[16] **2003 (1) SCR 567**
[17] **(2015) 9 SCC 1**
[18] **1985 (3) SCR 243**
[19] **(1961) 1 LLJ 521 (SC)**

35. 'industry' is defined, in Section 2(j) of the ID Act, in the following terms:

> '(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;"

36. The learned Tribunal has relied, extensively, on ***Bangalore Water Supply***[1], and with just reason. It is true that the correctness, as well as the continued relevance and applicability, of the principles enunciated in ***Bangalore Water Supply***[1] have been questioned, on more than one occasion, by the Supreme Court. It is equally true that ***Bangalore Water Supply***[1] stands referred to a 9-Judge Bench, by order, dated 2nd January, 2017, in ***State of U. P. v. Jai Bir Singh***[20], following doubts, as to its correctness, having been expressed in the judgment, passed in the same case, on 5th May, 2005[21]. As on date, however, ***Bangalore Water Supply***[1] remains pristinely undisturbed. Having weathered the storms of judicial scrutiny thus far, ***Bangalore Water Supply***[1] necessarily continues to bind this Court, as the "law declared" under Article 141 of the Constitution of India.

37. Krishna Iyer, J., who has famously – and, needless to say, inimitably – authored the leading opinion in ***Bangalore Water Supply***[1], set out, in paras 140 to 143 of the report, an itemised summary of the conclusions that emanated from the decision. So pregnant, with legal thought, is, indeed, the leading opinion of Krishna Iyer, J., that the following propositions, which emerge from the said opinion deserve,

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[20] **(2017) 3 SCC 311**
[21] **State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1: 2005 SCC (L & S) 642**

separately, to be set out, using, as far as possible, the words of the Hon'ble Judge himself (the underscored words stand emphasised in the original judgement, though italicised emphasis has been supplied):

(i) Statutorily, the definition of 'industry', in Section 2(j) of the ID Act, is intended to be accorded "not narrow but an enlarged acceptation". "Section 2 (j) must receive comprehensive literal force, limited only by some cardinal criteria."

(ii) 'industry' overflows trade and business.

(iii) "Capital, ordinarily assumed to be a component of 'industry', is an expendable item so far as statutory 'industry' is concerned. … Absence of capital does not negative 'industry'."

(iv) "Even charitable services do not necessarily cease to be 'industries' definitionally although, popularly, charity is not industry."

(v) "Profit-making motive is not a *sine qua non* of 'industry', functionally or definitionally."

(vi) "'Industries' will cover branches of work that can be said to be analogous to the carrying out of a trade or business'." "'Analogous to trade or business' cuts down 'undertaking', otherwise "a word of fantastic sweep. … *The analogy with trade or business is in the 'carrying out' of the economic adventure*. So, the parity is in the *modus operandi*, in the working – *not in the purpose of the project nor in the disposal of the proceeds but in the*

organisation of the venture, including the relations between the two limbs, viz., labour and management. If the mutual relations, the method of employment and the process of cooperation in the *carrying out of the work bear a close resemblance to the organisation, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. ... An activity oriented, not motive based, analysis."* "*The 'analogous' species of quasi-trade qualify for becoming 'industry' if the nature of the organised activity implicit in a trade or business is shared by them. ... The pith and substance of the matter is that the structural, organisational, engineering aspect, the crucial industrial relations like wages, leave and other service conditions as well as characteristic business methods (not motives) in running the enterprise, govern the conclusion. Presence of profit motive is expressly negated as a criterion. … If the nature of the activity is para-trade or quasi-business,* it is of no moment that it is undertaken in the private Sector, joint Sector, public Sector, philanthropic Sector or labour Sector; it is 'industry'. *It is the human Sector, the way the employer-employee relations are set up and processed* that gives rise to claims, demands, tensions, adjudications, settlements, truce and peace in industry. That is the *raison d'etre* of industrial law itself."

(vii) Enterprises, run by Governments and municipal and statutory bodies "do not for that reason cease to be industries."

(viii) "Professions are not *ipso facto* out of the pale of industries."

(ix) One of the "cardinal criteria", which limits Section 2(j), "is Crown exemption, reincarnating in a Republic as *inalienable functions of constitutional government*.... Core functions of the State are paramount and paramountcy is paramountcy. But this doctrinal exemption is not expansionist but strictly narrowed of necessitous functions." "Sovereign functions of the State cannot be included although one such functions has been aptly termed 'the primary and inalienable functions of a constitutional government'. Even here", it would be inept to rely on "the doctrine of regal powers." "*Essential 'sovereign activities'"* stood expelled, from the scope of Section 2(j). "The key aspects of public administration like public justice stand out of the circle of industry." However, "if there are industrial units severable from the essential functions and possess an entity of their own it may be possible to hold that the employees of those units are workmen and those undertakings are industries. A blanket exclusion of every one of the host of employees engaged by government in departmental falling under general rubrics like justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act."

(x) "The nature of actual function and of the pattern of organised activity is decisive."

(xi) "If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the Department shall be the criterion for the purpose of the Act."

(xii) Three definitive indicia were, therefore, propounded, viz. "(a) the paramount and predominant duty criterion; (b) the specific service being an integral, non-severable part of the same activity and (c) the irrelevance of the statutory duty aspect."

(xiii) "The question is *not* whether the discharge of certain functions" by the Government "*have statutory backing, but whether those functions can equally be performed by private individuals.*" A department, the services of which "are analogous to those of a private individual, with the difference that one has the statutory sanction behind it and the other is governed by terms of contracts" would, therefore, be 'industry'.

(xiv) "Even justicing is service and, but for the exclusion from industry on the score of sovereign functions, might qualify for being regarded as 'industry'."

(xv) "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 cooperation 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… Thus *the*

manner in which the activity in question is organised or arranged, the condition of the cooperation 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 activities to which Section 2(j) applies." This has, classically, been come to be known as the "triple test", the satisfaction of which is an imperative *sine qua non* for an establishment to be an 'industry', within the meaning of the ID Act.

(xvi) Professions, including the liberal professions, which satisfies the above criteria, are 'industry'. "Assuming that a professional in our egalitarian ethos, is like any other man of common clay plying a trade or business, we cannot assent to the cult of the elite in carving out islands of exception to 'industry'. … Even so, the widest import may still self-exclude the little mofussil lawyer, the small rural medico or the country engineer, even though a hired sweeper or factotum assistant may work with him. … A small category, perhaps large in numbers in the mofussil, may not squarely fall within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but *because there is nothing like organised labour in such employment*. The image of industry, or even quasi-industry is one of a plurality of

workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for likelihood taking some paid or part time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candlestick maker, with an assistant or without, does not fall within the definition of industry."

(xvii) "In regular industries, of course, even a few employees are enough to bring them within Section 2(j). Otherwise automated industries will slip through the net."

(xviii)Subject to the satisfaction of the criteria delineated hereinabove, "education is industry".

(xix) "It is one thing to say that an institution is not an industry. It is altogether another thing to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act and so the institution ceases to be an industry.

The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity."

(xx) "Charitable adventures", which do not possess the feature of being organised, systematic activities, are not industries. "Sporadic or fugitive strokes of charity do not become industries." Philanthropic entities "fall for consideration only if they involve cooperation between employers and employees to produce and/or supply goods and/or services."

(xxi) The purpose, to which the profits earned from an enterprise is put is, however, irrelevant. "If a business is run for production and/or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or a substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the cooperation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work for wages and are treated like any other workman in any other industry. All the features of an industry are fully present" in these charitable businesses. In short, they are industries. For the same reason, once the "triple test", referenced hereinabove, is satisfied, the fact that the goods/services may be given free, or against a negligible return to the needy and ailing, would not insulate the enterprise from the definition of 'industry'. "Noble objectives, pious purposes,

spiritual foundations and developmental projects are no reason not to implicate these institutions as industries."

(xxii) However, purely spiritual / religious / philanthropic enterprises, involving, generally speaking, not employees, but volunteers, who discharge service/*seva* to propitiate the *guru* or the master, and draw wages, even if they draw small pocket money from the earnings of the institution, would not be 'industries', even if they employed some stray employees for wages. "If a philanthropic devotion is the basis for the charitable foundation or establishment and the institution is headed by one who wholeheartedly dedicates himself for the mission and pursues it with passion, … attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial'." This is because "there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service…. In one sense, there are no employers and employees but crusaders… In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like.… If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wageless *shishyas*, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on regular basis for hire. The reason is that in the crucial, substantial

and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. … We must look at the predominant charechter of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry."

(xxiii) Research institutions are also 'industry', as they involve collaboration between the employer, being the institution, and the employees, i.e., the scientists, para-scientists and other personnel, and scientific researchers, leading to discoveries, which are valuable contributions to the wealth of the nation, was service. "Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

(xxiv) Clubs, too, qualify for inclusion in the 'industrial' fold, as they, "when X-rayed from the industrial angle, project a picture on the screen typical of employers hiring employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is a co-operation, the

club management providing the capital, the raw material, the appliances and auxiliaries and the cooks, waiters, bell boys, pickers, barmaids or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. …… Clubs, speaking generally are social institutions enlivening community life and are the fresh breath of relaxation in a faded society. They serve a section and answer the doubtful test of serving the community. They are industry." Small self-service clubs, who did not hire employees to do the "elaborate business management chores of the well-run city or country clubs", in which the members arrange things for themselves, the key was kept by the Secretary, an elected member and terms were organised by the club members interested in particular pursuits, with the dynamic aspect being self-service, would not be 'industries' even if, in such an institution, a part-time sweepers, or scavenger, or attendant, was employed. That marginal element would not transform the little association into an industry. If, therefore, "a club or other like activity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the member's role is to enjoy." "Club", therefore, "is industry *manu brevi*".

(xxvii) Based on the same foundational logic, cooperative societies are also 'industry', as the society was the employer, the members, and/or others were employees, and the activity of the cooperative societies partook of the character and nature of trade.

Similarly, credit unions, organised on a cooperative basis, were also 'industries'.

(xxviii) Similarly, hospitals, schools, painting institutes and studios, which involved service of employees, and themselves render service to the community, qualified as 'industries'.

38. Indeed, if one were, holistically, to appreciate ***Bangalore Water Supply***[1], one finds that the judgement contemplates only four categories of establishments, as being excluded from the ambit of the definition of 'industry', as contained in Section 2(j) of the ID Act. These would be (i) establishments discharging "strictly" or "core" sovereign functions, (ii) establishments which are purely religious or philanthropic in nature, in which all essential services are provided by volunteers, who work, not for wages, but with the pious purpose of serving the institution and its head, (iii) minuscule professional establishments such as a small advocate's office and (iv) similarly minuscule clubs, which run on self-service basis, without any of the indicia of a trade or business. Else, all establishments, which satisfy the triple test, meaning that they (i) involve systematic activity, (ii) are run analogously to trade or business and (iii) are engaged in the production of goods or services for the community, would be 'industry'. Establishments *do not* escape the embrace of the 'industrial' definition, merely because they are Governmental in nature, or do not involve any profit element, or function under the aegis of one, or the other, statute. Similarly, the *motive* that propels the organisation, as also the purpose, to which the proceeds of the organisation lend themselves, are irrelevant considerations. The judgement is careful to emphasise,

repeatedly, that the "analogy" with trade or business, which is an essential *sine qua non* for an establishment to be 'industry' within the meaning of Section 2(j) of the ID Act, is in the *running of the establishment*, and not in the manner in which its proceeds are used. It is for this reason that the judgement holds that establishments, which may otherwise be purely charitable in nature, or the proceeds of which may be expended solely for philanthropic purposes, may still be 'industry', if they are run in a manner analogous to the manner in which trade or business is run.

39. The office of the Controller General, *ex facie*, satisfies the triple test. It is run analogously to trade or business, in that it involves a mammoth establishment, employing several employees, who work for wages, and is also commercial in the manner in which it deals with those who approach it, in that a person, who seeks grant of a patent or design, or registration of a trade mark, cannot expect to get it free; he has to apply for it, and, apart from fulfilling other requisite formalities, pay the prescribed fee. Analogy to trade or business is, therefore, in my opinion, intrinsic in the manner in which the office of the Controller General is run. The activity of the office of the Controller General is systematic and, unquestionably, the office renders valuable service to the public patent-, design-, or trade mark-seekers.

40. Are, however, the functions, conferred on, and rendered by, the office of the Controller General, "sovereign", so as to immunise it from Section 2(j) of the ID Act? The petitioner would plead that the answer, to this poser, has necessarily to be in the affirmative.

‘Sovereignty’, in the context of Section 2(j) of the ID Act, demystified

41. It would be appropriate to refer to certain decisions, which have ruled on the concept of “sovereign functions”, in the backdrop of ***Bangalore Water Supply***[1].

42. ***Des Raj v. State of Punjab***[22] examined the issue of whether the Irrigation Department of the State of Punjab would be regarded as an ‘industry’, within the meaning of Section 2(j) of the ID Act, or not, in the backdrop of the law laid down in ***Bangalore Water Supply***[1]. Para 9 of the report, after noting that the said Department *“was discharging the State’s obligations created under the Northern India Canal and Drainage Act, 1873”*, extracted the following passages, from the Administration Report of the Public Works Department, Irrigation Branch, for the year 1981-1982, which dealt with the nature of work rendered by the Irrigation Department:

> “The Irrigation Department which was set up more than 100 years ago is mainly responsible to provide water supplies for the subsistence and development of agriculture in the 30.36 hectare cultivable area of the State covered by canal command. This requires harnessing of the surface and ground water resources of the State and their equitable distribution to the beneficiaries, within Canal Common area. This task involves construction of multipurposes, major, medium and minor irrigation projects, maintenance of network of channels, regulation of canal supplies, enforcement of water laws etc. and levying of crop-wise water supply rates on the irrigators for recovery through the State Revenue Department. Extension, improvement and modernisation of the age old canal system is also continued to be done simultaneously by the Department. Besides the irrigation the department also provides water for drinking purposes to villages and towns in the State. The canal water supplies are also

[22] **(1988) 2 SCC 537**

being made available for the industrial development in areas where no other source for water supplies exists.

The State of Punjab was reorganised in the year 1966 and a number of disputes on the sharing of water/powers with successor States cropped up. The issues regarding apportionment of Ravi Beas waters over the preparation uses falling to the share of erstwhile Punjab, apportionment of rights and liabilities of Bhakra Nangal Project, retention of control of Irrigation Head Works of Harike, Ropar and Ferozepur by Punjab, restoration of Bhakra Nangal Project and Beas Project to Punjab etc., etc. are also dealt with by the Department.

The Irrigation Department is also responsible to provide protection to the valuable irrigated lands and public property from flooding, river action and waterlogging. This requires construction of flood protection, river training, drainage and anti-waterlogging works and their maintenance.

The Department has also to plan ahead for irrigation development in the State for which purpose proposal of irrigation schemes are investigated, surveyed and prepared in advance. Feasibility of irrigation schemes for hydropower generation from the existing and proposed irrigation schemes is also investigated by the Department and their execution undertaken. The execution of new irrigation schemes, extension and improvement of existing schemes requires preparation of detailed designs of channels and their necessary works. This work is also done by the Department.

During designs, execution and maintenance of the irrigation, flood control and drainage projects, field problems arise for the solution of which research, model studies and laboratory experiments have to be conducted. The Department undertakes this work as well.

Having shared with the neighbouring States almost entire water resources of the rivers flowing through the Punjab water has now become a constraint to keep the tempo of the development of irrigated agriculture in the State. For this purpose it has not only become necessary to evaluate the total water resources of the State but also plan conjunctive use of surface and ground water for the optimum development of this precious resource. Further it has become necessary to conserve irrigation supplies and

> propagate their use economically through innovative water distribution system like sprinklers, drip system, etc.
>
> The Irrigation Department plans and executes reclamation of salt or thur affected areas within canal command. Measurements of discharges in the Ravi, the Beas and the Sutlej besides the beings (*sic*) and drains in the State is also carried out by the Irrigation Department. These observations which are being made for the last over 60 years have provided basic data to the design of multipurposes Bhakra Nangal, Beas and Beas-Sutlej Link projects which have transformed economies not only of the State of Punjab but also of the States of Haryana and Rajasthan."

The factual findings returned by the High Court of Punjab and Haryana – against whose judgement of the Supreme Court was petitioned – on the basis of the afore-extracted paras from the Administrative Report of the Irrigation Department, were also extracted, by the Supreme Court, in the same para of its report, thus:

> "The Irrigation Department is a branch of the Public Works Department. It provides a reasonably assured source of water for crops through the network of canals. The Irrigation Department also carries out schemes and takes measures for protecting crops from the menace of floods during the times of abnormal rainfall. In the olden times when there were no canals, agriculture was very limited and cultivators depended solely on rainfall. By the passage of time it was thought necessary to build irrigation and drainage works for the purpose of providing better water facilities to the farmers on whom depends the economy of this country. *These works could only be built by the Government.*
>
> The western Jamuna canal which serves the State of Haryana was the first major irrigation work which was initially constructed by Feroze Shah Tuglaq in 1351. It was reconditioned by Akbar in 1568 and was extended in 1626 in the reign of Shahajahan. The canal was constructed in a reasonably serviceable form by the British during 1817-1823. Then the Upper Bari Doab canal, Sirhind canal, Lower Chanab canal and Lower Jhelum canal etc., were constructed. Thereafter, many other projects have come up and the ones which need mention are Bhakra Nangal project with its network of Bhakra system and the Beas project. *All these projects have been carried out by the State at the State expense.*

It is understandable that such projects could not at all be undertaken by private entrepreneurs or could be left in their hands for execution. Further, water is a State subject as per Entry 17 in List II of Seventh Schedule of the Constitution. Even before coming into force of the Constitution, water of rivers and streams was considered to be belonging to the State.... Thus it would be evident that the water has at all times been a State subject and the State can exercise full executive powers in all matters connected with the water. The State supplies water to the farmers through the network of canals. It is correct that water rates are realised from the farmers but they are not realised for the cost of the water. In other words, *the State does not sell water to the farmers.* As contended justifiably by the learned Advocate-General, the water charges are not even sufficient to meet the establishment and maintenance expenses of the department. Moreover, the water rates have never been realised on the basis of the quantity of the water supplied. These rates are dependent upon the class of crops raised by the farmers and have been fixed in terms of per acre. It may be noted that rates for crops, such as wheat, sugarcane, cotton, rice are higher than the other crops such as gram, oil seeds, bajra and maize etc. In other words, the water charges have been linked on the principle of bearability, that is, paying capacity of the farmer dependent upon his income from the kind of crop raised by him. The water is supplied on the basis of the holding of each farmer in terms of cultivable commanded area, that is, on the basis of uniform and equitable yardstick. Again, the water charges are remitted when the crops are damaged by natural calamities such as locust, hailstorms, floods or drought etc. Further, the construction of canals, dams, barrages, and other projects cannot be entrusted to some private hands. The construction of these works involves compulsory acquisition of land which can also be done by the State. *Merely this fact that water is supplied by charging certain rates cannot warrant a finding that the State is indulging in trade or business activity or an activity which is analogous to trade, business or economic venture. From what has been stated above, there can be no gainsaying that the functions of the irrigation department cannot at all be left to private enterprise.* The facts which weighed in holding that the construction and maintenance of national ard state highways by the State does not come within the ambit of *industry* in *Kuldip Singh case* [(1983) 1 Lab LJ 309] are present so far as the irrigation department is concerned.... In this view of the matter, *I hold that the functions of the Irrigation Department are essentially Government functions and that these*

> *functions neither partakes of the nature of trade and business nor are even remotely analogous thereto* and that this department does not come within the ambit of *industry* as defined in Section 2(*j*) of the Act."
>
> (Emphasis supplied)

43. Reversing these findings, the Supreme Court, in para 13 of its report, went on to hold that the Irrigation Department of the State of Punjab was an 'industry', applying the "dominant nature test", promulgated in ***Bangalore Water Supply***[1]:

> "13. The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. *On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of 'industry'.* We have already referred to the Dominant Nature test evolved by Krishna Iyer, J. *The main functions of the Irrigation Department were subjected to the Dominant Nature test clearly come within the ambit of industry…*"
>
> (Emphasis supplied)

44. Similarly, in ***Management of Dandakaranya Project, Koreput v. Workmen***[23], it was sought to be contended that the Dandakaranya Project, which was intended at rehabilitating refugees from Pakistan, was not an 'industry', as, in its administration, sovereign functions were being exercised. The Supreme Court negatived the contention, and held the Project to be an 'industry', and the persons, employed by the project, to be workmen, entitled to maintain an industrial dispute.

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[23] **(1997) 2 SCC 296**

45. Another decision, which alluded to the concept of "sovereign functions", and the discharge thereof, as being a determinative factor in estimating whether a particular institution did, or did not, fall within Section 2(j) of the ID Act, but went on to decide the issue in controversy, before it, on a different point, was ***Physical Research Laboratory***[10], which examined whether the Physical Research Laboratory (PRL), being an Institute registered under the Bombay Public Trust Act, 1950 dedicated to research in space and allied sciences, financed mainly by the Department of Space of the Central Government, was, or was not, an 'industry'. Having noticed the principles enunciated in ***Bangalore Water Supply***[1], the Supreme Court answered the question in the negative, in paras 12 and 13 of its report, which read thus:

> "**12.** PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. *The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services.* The material on record further discloses that PRL is conducting research *not for the benefit or use of others.* Though the results of the research work done by it are occasionally published *they have never been sold.* There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. *It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner.*
>
> **13.** It is nobody's case that PRL is engaged in an activity which can be called business trade or manufacture. Neither from

> the nature of its organisation nor from the nature and character of the activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."
>
> (Emphasis supplied)

46. In view of the specific finding of the Supreme Court, based on the finding of the authorities below, that the results of the research, conducted by the PRL, were intended for its own use, and not for dissemination to the public, the PRL, as a self-serving research laboratory, would be excepted from the definition of 'industry', as it did not produce goods or services for others. Though, therefore, para 13 of the judgement in ***Physical Research Laboratory***[9] appears to be somewhat at variance with the finding, in para 38 of ***Bangalore Water Supply***[1] – which clarifies that the analogy, with trade or business, as the *sine qua non* for an establishment to be an 'industry', within the meaning of Section 2(j) of the ID Act, has to be in the *manner of running of the establishment*, and not in its *object or purpose*, or the manner in which its profits are utilised – the ultimate conclusion, in ***Physical Research Laboratory***[9], is in sync with the judgement in ***Bangalore Water Supply***[1].

47. The issue, in ***Chief Conservator of Forests v. Jagannath Maruti Kondhare***[24], was whether the office of the Chief Conservator of Forests could be regarded as an 'industry', within the meaning of Section 2(j) of the ID Act, or not. The Supreme Court opined, at the outset, that the issue had to be examined in the light of the principles enunciated in ***Bangalore Water Supply***[1], which represented the extant legal position. It was noticed that ***Bangalore Water Supply***[1] conferred immunity, only to establishments or organisations discharging sovereign functions *strictly construed*, and included, within Section 2(j), organisations discharging the welfare activities or economic adventures of the Government. At the same time, it was observed that the decision in ***Bangalore Water Supply***[1] provided no guidance as to the indicia which would serve to determine whether a particular establishment was, or was not, discharging sovereign functions "strictly understood". The Supreme Court noticed that ***Bangalore Water Supply***[1] had approved the earlier decision in ***Corporation of City of Nagpur***[3], which, in turn, relied on the following passage, from the dissenting judgement of Isaacs, J. in ***Federated State School Teachers Association of Australia v. State of Victoria***[25]:

> "Regal functions are *inescapable and inalienable*. *Such are the legislative power, the administration of laws, the exercise of the judicial power*. *Non-regal functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation as the charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised*."
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> (Emphasis supplied)

The Supreme Court went on to observe that, in ***Corporation of City of Nagpur***[3], relying on the aforesaid extract from ***Federated State School***

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[24] **(1996) 2 SCC 293**
[25] **(1929) 41 CLR 569**

Teachers Association of Australia[25], *inalienable* functions of the State, alone, were treated as "sovereign". In fact, a reading of the afore-extracted passage from ***Federated State School Teachers Association of Australia***[25] discloses that it distinguished, significantly, functions which were performed by the Government under statutory compulsion, vis-à-vis functions which were fundamentally inalienable and, consequently, were sovereign. *Sovereignty, therefore, could not, as per the afore-extracted passage, be merely conferred by statutory compulsion. Activities which were otherwise run, analogously to trade and business, and satisfied the triple test laid down in* ***Bangalore Water Supply***[1]*, therefore, would not cease to be 'industrial', merely because the power to discharge the said activities was, statutorily, conferred on the Government*. This distinction is significant, especially in view of the controversy that arises in the present case.

48. The Supreme Court went on, in para 13 of the report, to rule thus:

> "13. The aforesaid shows that *if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in* ***Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207]*** *would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry;* and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable.
>
> (Emphasis supplied)

49. ***Chief Conservator of Forests***[24], therefore, clearly held that "strict" sovereign functions, alone, stood excepted from the ambit of Section 2 (j) of the ID Act.

50. In this context, reference is required to be made to four interconnected judgements of the Supreme Court, namely ***Sub-Divisional Inspector of Post v. Theyyam Joseph***[26], ***Bombay Telephone Canteen Employees'Association v. U.O.I.***[27], ***General Manager, Telecom v. A. Srinivasa Rao***[28] and ***All India Radio v. Santosh Kumar***[29].

51. ***Theyyam Joseph***[26], which involved an industrial dispute initiated by certain extra-departmental agents employed by the Sub-Divisional Inspector of Posts, in the Department of Posts, was contested, on the ground that the Department of Posts was not an 'industry', within the meaning of the ID Act. The Supreme Court accepted this submission and held the dispute, initiated by the respondent before it, to be incompetent, thus (in para 6 of the report):

> "Having regard to the contentions, the question arises whether the appellant is an industry? India as a sovereign, socialist, secular, democratic republic has to establish an egalitarian social order under rule of law. *The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive Principles of State Policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity, and so is an essential part of the*

[26] **(1996) 8 SCC 489**
[27] **(1997) 6 SCC 723**
[28] **(1997) 8 SCC 767**
[29] **(1998) 3 SCC 237**

> *sovereign functions of the State as a welfare State.* It is not, therefore, an industry."
>
> (Emphasis supplied)

52. ***Theyyam Joseph***[26] was followed, and ***Bangalore Water Supply***[1] criticised, in ***Bombay Telephone Canteen Employees' Association***[27], which espoused the cause of five employees of the Telephone Nigam Limited, Bombay, who, on being terminated from service, sought to raise an industrial dispute. The said employees were, specifically, employed in the Prabhadevi Telephone Exchange, Bombay. The petitioner, before the Supreme Court, relied on ***Theyyam Joseph***[26]. Relying on ***Theyyam Joseph***[26], the Tribunal held that the departmental Canteen, in which the members of the appellant-Association (before the Supreme Court) had been employed, was not an 'industry' but, nevertheless, held, on merits, that the termination of the said employees was bad in law. Questioning the said decision before the Supreme Court, the appellant-Association contended that ***Theyyam Joseph***[26] was contrary to ***Bangalore Water Supply***[1] – which, in fact, had not even been noticed in ***Theyyam Joseph***[26] – and was, therefore, *per incuriam*. Adjudicating on the issue, the Supreme Court relied on the admission, in the counter-affidavit of the Union of India, that the members of the appellant-Association, before it, were holders of civil posts, to rule that the Industrial Tribunal did not possess the jurisdiction to adjudicate any dispute, under Section 10 of the ID Act, though the members of the appellant-Association were at liberty to approach the writ court, under Article 226 of the Constitution of India. In the process, the Supreme Court also observed that the result of applying, literally, the doctrine enunciated in ***Bangalore Water Supply***[1], would be catastrophic.

53. ***Theyyam Joseph***[26] and ***Bombay Telephone Canteen Employees'Association***[27]– each of which was rendered by a bench of two Hon'ble judges – were both, however, overruled by a 3-Judge bench of the Supreme Court, in ***A. Srinivasa Rao***[28] which, analogously, dealt with employees of the Telecom Department of the Union of India. Observing that, applying the "dominant nature" test, the Telecom Department was liable to be regarded as an 'industry', within the meaning of Section 2(j) of the ID Act, the Supreme Court, in ***A. Srinivasa Rao***[28], held, obviously unexceptionably, that *no bench, comprising less than 7 Judges of the Supreme Court, could depart from* ***Bangalore Water Supply***[1], even if, in its opinion, adherence, to the said decision, could result in "catastrophic" consequences. Para 7 of the report in ***A. Srinivasa Rao***[28], which evocates this view, may be reproduced, thus:

> "7. A two-Judge Bench of this Court in ***Theyyam Joseph case***[26]**,** held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an 'industry' within the definition of Section 2(*j*) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench decision in ***Bangalore Water Supply***[1]. In a later two-Judge Bench decision in ***Bombay Telephone Canteen Employees' Assn. case***[28]**,** this decision was followed for taking the view that the Telephone Nigam is not an 'industry'. Reliance was placed in ***Theyyam Joseph case***[26] for that view. However, in ***Bombay Telephone Canteen Employees' Assn. case***[28] (i.e. the latter decision), we find a reference to the ***Bangalore Water Supply case***[1]. After referring to the decision in ***Bangalore Water Supply***[1] it was observed that if the doctrine enunciated in ***Bangalore Water Supply***[1] is strictly applied, the consequence is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in ***Bangalore Water Supply case***[1]**,** by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength,

> to take a view contrary to that in ***Bangalore Water Supply***[1] or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back — nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in ***Bangalore Water Supply case***[1]. We must, therefore, add that the decisions in ***Theyyam Joseph***[26] and ***Bombay Telephone Canteen Employees' Assn.***[28] cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail."

54. ***Theyyam Joseph***[26] and ***Bombay Telephone Canteen Employees'Association***[27] were again sought to be pressed, into service, in ***All India Radio***[29] which, however, predictably repelled the submission, observing that the said decisions stood overruled by ***A. Srinivasa Rao***[28]. Consequently, it was held, the respondents before it, who were employees of the All India Radio, were eligible to maintain an industrial dispute, challenging the orders terminating them from service, and to claim regularisation.

55. ***Agricultural Produce Market Committee v. Ashok Harikuni***[30] involved a challenge to the termination, by the appellant-Agricultural Produce Market Committee (hereinafter referred to as "APMC"), which was a Market Committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as "the 1966 Act"). The award of the Labour Court, reinstating the respondents (before the Supreme Court) in service, was assailed, by the APMC, before the High Court, contending, principally, that the APMC was not an 'industry' within the meaning of the ID Act. The challenge was

[30] **(2000) 8 SCC 61**

repelled, by the High Court, both in the writ petition as well as in appeal, thereby prompting the APMC to move the Supreme Court.

56. APMC contended, before the Supreme Court, that it was not an 'industry', within the meaning of the ID Act. The judgement of the Supreme Court examined, essentially, this aspect.

57. That the APMC was a creature of the 1966 Act, and that its functions were governed by the provisions thereof, was not seriously in dispute. Section 9 of the 1966 Act established the APMC and made it subject to the restrictions imposed by the said Act. Reliance was placed, by the APMC, before the Supreme Court, on various provisions of the 1966 Act, which went to show that the scheme of the Act was for better regulation of marketing of agricultural produce and establishment and control of the agricultural produce market within the State. It was contended that these provisions indicated that the function of the APMC was sovereign in nature, thereby insulating it from the "industrial" sweep of the ID Act. Section 65 of the 1966 Act authorised the APMC to levy market fees. Section 71 empowered the APMC to issue licenses for the regulation of trading under Section 72, and Section 73 empowered the APMC to cancel or suspend the said licenses. Section 83 dealt with production of account books, etc.

58. The submission that the APMC was exercising sovereign functions was premised on the following facts:

(i) The power of appointment of employees, under the 1966 Act, was only with the State Government. The APMC had only limited power to appoint persons temporarily for a period not exceeding 180 days.

(ii) A person appointed did not get any lien to any post, and could not seek regularisation.

(iii) The function of the APMC was to regulate trade notified agricultural produce in order to safeguard the interests of the agriculturists and the public at large. This, in turn, was to ensure that the agricultural produce was sold in the market area at a legitimate price.

(iv) The APMC was not constituted for making any profit, but was intended only to serve the cause of the agriculturists so that they received a fair price for their produce.

(v) Persons, appointed to work under the APMC, were government servants, appointed in accordance with the cadre and their wages were paid out of the Consolidated fund.

(vi) There was, therefore, no relationship of employer and employee, between the APMC and the persons serving under it.

Emphasis was placed on the functions of the APMC, under the 1966 Act, which were regulation of the marketing of specified agricultural produce, declaration of market area, establishment of market, appointment of Secretary and technical staff, absorption of staff of the market Committee

in government service, levy of market fees, grant of licence, the notification of market area and amalgamation of market committees, governed by various provisions of the 1966 Act. It was contended that these functions were, fundamentally, sovereign in nature.

59. As against this, the respondent workmen, before the Supreme Court, contended that only sovereign functions "strictly construed" were exempted from the applicability of the ID Act. Equally, it was submitted, every governmental, or statutory, function, could not be regarded as "sovereign". "Sovereign" functions were, it was submitted, exempted from the applicability of the ID Act, only if they were in the nature of legislative functions, maintenance of law and order, administration of law and the legal system.

60. Having noted the decisions in ***D. N. Banerji***[2], ***Corporation of City of Nagpur***[3], ***Hospital Mazdoor Sabha***[9], ***Bangalore Water Supply***[1], ***Chief Conservator of Forests***[24], ***N. Nagendra Rao v. State of A.P.***[31] (which did not arise under the ID Act) and ***Des Raj***[22], the Supreme Court went on to reject the submission, of the APMC, before it, that, as a repository of "sovereign" functions, it was immunised from the effect of the ID Act, in the following words (from paras 27, 28 and 32 of the report):

> "**27.** *It is true various functionaries under this Act are creatures of statute. But creation as such, by itself, cannot confer on it the status of performing inalienable functions of the State.* The main controlling functions and power is conferred on the market committee whose constitution itself reveals that except one or two, the rest are all elected members representing some or other class from the public. In fact, *all governmental functions cannot be construed to be either primary or inalienable sovereign function.* Hence even if some of the functionaries

[31] **(1994) 6 SCC 205**

under the State Act could be said to be performing sovereign functions of the State Government *that by itself would not make the dominant object to be sovereign in nature* or take the aforesaid Act out of the purview of the Central Act.

28. *Thus merely an enterprise being a statutory corporation, a creature under a statute, would not take it outside the ambit of 'industry' as defined under the Central Act. We do not find the present case falling under any exception laid down in the* ***Bangalore Sewerage Board case***[1]. The mere fact that some employees of the appellant are government servants would make no difference as *the true test to find — has to be gathered from the dominant object for which functionaries are working. It cannot be doubted that the appellant is an undertaking performing its duties in a systematic and organised manner, regulating the marketing and trading of agricultural produce, rendering services to the community.* In the present case, as we have recorded earlier, we are concerned only with those employees who are not government servants. Testing the dominant object as laid down ***in Bangalore Sewerage Board case***[1] we reach to inescapable conclusion that *none of the activities of the Agriculture Produce Market Committee could be construed to be sovereign in nature.* Hence we have no hesitation to hold that this Corporation falls within the definition of 'industry' under Section 2 (*j*) of the Central Act.

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32. So, *sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only the State could exercise. Thus, various functions of the State, may be ramifications of "sovereignty" but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body; the one which could be undertaken cannot be sovereign function*. In a given case even on subjects on which the State has the monopoly may also be non-sovereign in nature. *Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro*

would also not make such enterprise to be outside the ambit of 'industry' as also held in ***State of Bombay case***[9].

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35. In view of the aforesaid settled legal principle the width of 'industry' being of widest amplitude and testing it in the present case, in view of the Preamble, Objects and Reasons and the scheme of the Act, *the predominant object clearly being regulation and control of trading of agricultural produce, thus the appellant Committee including its functionaries cannot be said to be performing functions which are sovereign in character*. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of 'industry' under Section 2(*j*) of the Central Act."

(Emphasis supplied)

61. This decision is significant as, even while reinforcing ***Bangalore Water Supply***[1], it re-emphasises the following fundamental propositions:

(i) An organisation which satisfies the "triple test" of being engaged in systematic activity, being run analogously to trade and business and being engaged in the production of goods and services for the community, is an 'industry', subject to the limited exceptions carved out, in this regard, by ***Bangalore Water Supply***[1].

(ii) While examining whether the organisation is engaged in discharge of "sovereign" functions, so as to be exempted from the applicability of the ID Act, the predominant nature of its functions has to be borne in mind.

(iii) Every organisation, discharging governmental functions, or functions which are conferred, on it, by statute, is not, necessarily,

discharging sovereign functions, so as to be immunised from the applicability of Section 2(j) of the ID Act.

(iv) Organizations and establishments, engaged in *sovereign functions, strictly speaking* or, expressed otherwise, *primary and inalienable sovereign functions*, alone, can claim exemption from the applicability of the ID Act, on that ground.

(v) Such inalienable sovereign functions would be in the nature of

(a) taxation,
(b) eminent domain,
(c) legislative functions,
(d) administration and maintenance of law and order,
(e) internal and external security and
(f) police pardon.

62. In fact, it would appear that only those functions which, interpreted *noscitur a sociis* with the aforementioned six functions, may be treated as "inalienably sovereign", could escape the sweep of Section 2(j) of the ID Act.

63. One may also refer, profitably, in this context, to the following note of caution entered by the Supreme Court in para 18 of the report in ***Balmer Lawrie & Co. Ltd v. Partha Sarathi Sen***[32]:

> "18. Often, there is confusion when the concept of sovereign functions is extended to include all welfare activities. However,

[32] **(2013) 8 SCC 345**

> *the court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body's powers and the manner in which they are exercised. What functions have been approved to be sovereign are the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, etc. and the same are not amenable to the jurisdiction of ordinary civil courts*."
>
> (Emphasis supplied)

64. The "predominant nature" test, thereby, stands reiterated, but, even more significant is the reference, by the Supreme Court, to "the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, *etc.*" Included, within the concluding "etc.", in the afore-extracted passage from the judgement of the Supreme Court, would be functions which are *similar, in character*, to those mentioned earlier, i.e. defence of the country, raising of Armed Forces, making peace, waging war, foreign affairs, and the power to acquire and retain territory.

65. Apparently, therefore, only such functions may be regarded as "inalienably sovereign", as could not, constitutionally and at any point of time, ever be delegated to a private authority, as they are *incapable of being discharged* by private persons. The fact that, in view of the statutory dispensation, existing at a particular point of time, the function is required to be discharged by the Government, or by a governmental authority, would not, *ipso facto*, be sufficient to characterise the function as "sovereign". Functions such as making peace, waging war, legislation, maintenance of public law and order, and eminent domain and acquisition of territory for public purposes, are constitutionally and

inalienably, sovereign, and are incapable of being delegated to any private authority, at any foreseeable point of time. Such functions, alone, would be eligible to be regarded as "inalienably sovereign", so as to justify exemption from the definition of 'industry' in the ID Act.

66. Having thus examined, comprehensively, the various decisions which threw light on the concept of "sovereign functions", vis-à-vis the judgement in ***Bangalore Water Supply***[1], we reach the order, dated 5th May, 2005, passed by a Constitution Bench of the Supreme Court in ***Jai Bir Singh***[20], whereby ***Bangalore Water Supply***[1] stands referred to a Larger Bench, for reconsideration. Para 25 of the report in ***Jai Bir Singh***[20] expresses doubts as to whether "the opinion of Krishna Iyer, J. given on his own behalf and on behalf of Bhagwati and Desai, JJ., can be held to be an authoritative president which would require no reconsideration even though the Judges themselves expressed the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in." Following on, and in accordance with, the judgment, dated 5th May, 2005 *supra*, the appeal, in ***Jai Bir Singh***[21], was placed before a bench of seven Hon'ble Judges who, *vide* order dated 2nd January, 2017[33], directed placing of the papers before the Hon'ble Chief Justice for constitution of a bench of nine Hon'ble Judges, to answer the issues raised in the judgment dated 5th May, 2005 *supra*. The matter rests there, as on date.

67. The afore-extracted doubts, expressed as they are by a Constitution bench of the Supreme Court are, unquestionably, entitled to a great

[33] **State of U.P. v. Jai Bir Singh, (2017) 3 SCC 311**

degree of respect; that, however, cannot, at least as on date, detract from the existing precedential value of ***Bangalore Water Supply***[1] which has, in all the decisions cited hereinabove, be regarded as binding on all courts, save and except a bench, of the Supreme Court itself, comprising seven or more Judges. A sequential scan of the afore-noted decisions reveals that ***Bangalore Water Supply***[1] has, in decision after decision, remained the gold standard, by which the question of whether any particular establishment qualifies as 'industry', within the meaning of the ID Act, as also whether the nature of functions, discharged by a particular establishment, could be regarded as "strictly sovereign", has been decided and determined. Till such time, therefore, as the decision in ***Bangalore Water Supply***[1] is reconsidered by a larger bench, Article 141 of the Constitution of India mandates this Court to faithfully follow the said decision.

68. At this juncture, it is also necessary to notice Section 2(c) of the Industrial Disputes (Amendment) Act, 1982, which substitutes clause (j) of Section 2 of the ID Act. Clause (j), thus substituted, would clear much of the haze in which the concept of 'industry' stands enveloped, as it sets out, expressly and *ad seriatim*, categories of establishments which would *not* be included in the definition of 'industry'. The Industrial Disputes (Amendment) Act, 1982, however, makes the said substituted clause (j) applicable only with effect from the date when Section 2 (c) of the ID (Amendment) Act, 1982, itself comes into force. That has not happened, till date, despite repeated exhortations, by the Supreme Court, advocating immediate enforcement.

The resultant position

69. Applying the law, as enunciated in ***Bangalore Water Supply***[1]**,** and as developed by the various judgements which succeeded, followed and, to one extent or the other, rationalized and explained ***Bangalore Water Supply***[1], it is obvious that the "triple-test", postulated in ***Bangalore Water Supply***[1], stands satisfied in the case of the petitioner-Controller General, in the present petitions, as the Controller General is engaged in systematic activity, providing services which are of inestimable worth, to the patent-seeking public, and functions in a manner analogous to trade and business – keeping in mind the position that analogy, to trade and business, is to be examined *in the manner in which the enterprise is run*, and not with respect to its objectives, the purpose for which it functions, or the manner in which the proceeds of the establishment are devolved.

70. Can it, then, be said that the Controller General performs "sovereign" functions and is, therefore, not an 'industry', within the meaning of clause (j) of Section 2 of the ID Act? On a careful consideration of the position in law, I am of the opinion that the answer, to this question, has necessarily to be in the negative.

71. The decisions, to which reference has already been made, hereinabove, make it clear that (i) every function, rendered by the Government, is not sovereign, and (ii) all sovereign functions are not insulated from Section 2 (j) of the ID Act and (iii) sovereign functions, which are core, inalienable and, thus, "strictly" sovereign, alone, escape the clutches of Section 2(j).

72. No definitive indicia, applying which, it could be asserted that sovereign functions, discharged by an enterprise, were *inalienably*, or *strictly*, sovereign, appears to have been laid down, in any decision of the Supreme Court and, perhaps, advisedly. Instead, the Supreme Court has chosen to make its meaning known by referring to certain examples of functions which partake of the character of "strict sovereignty", or which could be regarded as "inalienably sovereign". As has already been opined by me hereinabove, it would have to be examined whether the functions, discharged by the establishment, with which the Court is concerned in any particular case is, *noscitur a sociis*, "sovereign", vis-à-vis these examples, to which the Supreme Court has, from time to time, alluded. Such "core", or "inalienably" sovereign functions, as per the Supreme Court, would be the functions of taxation, eminent domain, legislative functions, administration and maintenance of law and order, internal and external security and police pardon. Can the function of grant of patents, to inventor-manufacturers, be analogised to these functions? The answer, in my opinion, has, self-evidently, to be in the negative.

73. There is, even in ***Bangalore Water Supply***[1] – in the passage which the learned Tribunal pertinently extracts in the impugned Award – a reference to patenting. While dealing with the aspect of whether research institutions qualified as 'industry', or not, the Supreme Court, while emphasising the value of discoveries and inventions, emerging from research, observed thus:

> "Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and

> sold. In our scientific and technological age nothing has no cash value, as intangible goods and invaluable services, then discoveries."

It is obvious that the value of the services rendered by the establishment which patents a new invention is as great as the services rendered by the inventing establishment. A patent immeasurably enhances the intrinsic value of an invention, and also prevents diminution thereof, by guarding against infringement of such patent. Equally valuable would be the service of registration of a design, or of a trademark. That the office of the Controller General renders valuable services to the community cannot, therefore, be denied. The contention, of Mr. Mahajan, that the office of the petitioner does not involve itself in activities which are analogous to trade or business, and does not render services which satisfy human wants is, therefore, obviously incorrect and is accordingly denied.

74. Mr. Mahajan also sought to emphasise, strenuously, that the duty of granting of patents was statutorily conferred on the office of the Controller General and was inalienable, in that it was incapable, *statutorily*, of being performed by any other authority. This, according to Mr. Mahajan, rendered the function "sovereign", and outside the pale of Section 2(j) of the ID Act. I am unable to agree. At the cost of repetition, it may be noted that there is a distinction, drawn by the various decisions of the Supreme Court, between sovereign functions and essentially, strictly, or inalienably sovereign functions. Sovereign functions become inalienably sovereign only when it is *impossible* to delegate them to any other authority. *Statutory conferment*, on the Government, or on a specified governmental authority – like the office of the Controller General – of a particular duty or function, by itself, would not render that

duty, or function, *inalienably* sovereign. Demystification of the concept of sovereignty, of functions which, at one point of time, were regarded as inalienably sovereign, has, over a period of time, become the order of the day. Functions, such as telecommunications, petroleum, aviation and maintenance of airports, which, at one point of time, were the essential province of the Government have, over a period of time, progressively been privatised, to one extent or another. Functions which, as on date, are required, statutorily, to be performed by an office of the Government, but may, conceivably, at some future point of time, be delegated to a non-Governmental authority, cannot be regarded as "strictly sovereign". On the other hand, functions such as collection of tax, maintenance of public law and order, legislation, external relations, and eminent domain, which have, at all times, to be performed by the Government, and by the Government alone, would qualify as "strictly" or "inalienably" sovereign functions, and establishments performing such functions cannot be regarded as 'industry'. The law has developed to a point where Government hospitals, public works departments, the transport Department of the Government, and even municipal authorities, have been brought within the sweep of Section 2(j) of the ID Act, and workmen, employed with these establishments, regularly petition the industrial court, and obtain succour. The Delhi Development Authority is an industry; the various Municipal Corporations of Delhi are industries; the Delhi Transport Corporation is an industry; every Government Hospital is an industry. Can, in such circumstances, the office of the Controller General be regarded as engaged in functions which are so sovereign, as to immunise it from Section 2 (j) of the ID Act? Mr. Mahajan's only response is that, as the statutory position, emerging from

the Patents Act – as well as the Trade Marks Act, 1999 and the Designs Act, 2000 – exists today, the office of the Controller General exercises functions which are statutorily conferred on his office and, owing to the specific statutory conferment to that effect, cannot be performed by any other authority. Statutory conferment of authority, or power, however, is not sufficient to hold that the organisation is not 'industry', within the meaning of the ID Act.

75. The core functions performed by the office of the Controller General, under the aforesaid three statutes, i.e. the Patents Act, the Designs Act and the Trade Marks Act, may be summarised, in a tabular form, thus:

Sr. No.	**Functions of Controller General**	**Statute**	**Section/rule**
1.	Grant of a patent	Patent Act 1970 Patent Rules, 2003	Sec 43 Rule 74
2.	Secrecy Directions and consequences thereof	-"-	Sec 35-38. Rule 72.
3.	Furnishing of Section 8 information	-"-	Sec 8 Rule 12
4.	Report by Controller and issuance of First statement of objection/ First Examination Report (FER)	-"-	Section 14, 15, 18, 21 Rule 24B, 28 28A
5.	Pre-grant oppositions, Post grant oppositions and constitution of opposition board	-"-	Sec 11A, 25 Rule 55, Rule 55A, 126, 127
6.	Restoration of Lapsed Patents	-"-	Section 60, 61,62 Rule 84-86, 94
7.	Assignment/Transfer of Rights	-"-	Sec 68, 69 Rule 90, 91, 92
8.	Revocation of patents	-"-	Sec 65 and 85
9.	Compulsory Licensing	-"-	Sect 84-94 Rules 96-102
10.	Powers that of a civil court		Sec 77
11.	Review of its own order	-"-	Sec 77(1)(f)
12.	Obviating an Irregularity	-"-	Rule 137

13.	Providing information regarding a patent or an application of patent	-"-	Sec 153, Rule 134
14.	Maintain a roll of scientific advisers	-"-	Rules 103, 103A
15.	Registration of designs	The Designs Act, 2000 The Designs Rules,2001	Sec 5
16.	Publication of Particulars of Registration of Designs	-"-	Sec 7
17.	Grant of Design registration	-"-	Sec 9
18.	Restoration of Lapsed Designs	-"-	Sec 12,13
19.	Cancellation of Design	-"-	Sec 19
20.	Refusal to register a design	-"-	Sec 35
21.	Assignment and transmission in registers	-"-	Sec 30
22.	Powers that of a civil court and discretionary powers	-"-	Sec 32,33
23.	Registration of Trade Marks	Trade Marks Act,1999	Sec 18,70,71
24.	Publication of register	-"-	Sec 20
25.	Refusal of Registration	-"-	Sec 9
26.	Correction of register	-"-	Sec 58,59
27.	Opposition to registration	-"-	Sec 21,73
28.	Grant of registration	-"-	Sec 23
29.	Cancellation of Registration	-"-	Sec 57
30.	Cancellation or varying of registration of certification Trade Marks	-"-	Sec 77
31.	Powers that of a civil court	-"-	Sec 127
32.	Extension of time	-"-	Sec 131

76. In the opinion of this Court, these functions, though multifarious, cannot be treated as inalienably sovereign, or akin to the functions of taxation, eminent domain, legislative functions, administration and maintenance of law and order, internal and external security and police pardon. Nor, in the opinion of this Court, can they be regarded as *core sovereign* functions which, are *constitutionally incapable* of delegation.

77. I am, therefore, of the opinion that the office of the Controller General is an 'industry', within the meaning of Section 2 (j) of the ID

Act. The finding, of the learned Tribunal, to the said effect, is upheld, and the contention, of the petitioner, to the contrary, is rejected.

An observation

78. Before parting with this issue, it is necessary to emphasise that definitions, in statutory instruments, are often far-removed from the commonplace understanding of the expression(s) defined. This, it is trite, is a perfectly legitimate legislative device. While examining a definition clause, therefore, it is entirely inappropriate to allow the imagination to boggle, merely because of the manner in which the expression is commonly understood. To cognoscenti and laity alike, the expression 'industry', as used in everyday conversation, ordinarily connotes a factory-like enterprise, manufacturing goods, with a multitude of workers and, perhaps, steam bellowing from the chimneys overhead. 'Industry', as statutorily conceptualised in the ID Act is, however, an altogether different creature. The office of the Chief Conservator of Forests, hospitals, educational institutions, municipal authorities – none of these would, by the fastest stretch of imagination, be regarded as 'industry', by the man on the street. They remain, however, transcendentally 'industry', for the purposes of the ID Act. There is a rationale, and a philosophy, for this, relatable to the object and purpose of the ID Act itself. The *raison d'etre* of the ID Act is maintenance and fostering of healthy industrial relations, between management and workmen. The definition of "workman", as contained in clause (s) of Section 2 of the ID Act, excludes, from its sweep, personnel discharging managerial or supervisory functions. Officers in the higher echelons of an enterprise

would not, therefore, be "workmen". It is the supervised who is the workman, not the supervisor. It is self-evident that the aim and object of the ID Act is, therefore, to ensure that the small workman, who supervises, and manages, no one and is, rather, managed and supervised by all, has a ready avenue to ventilate his legitimate grievances, relatable to his employment in the establishment. The intent and purpose of the ID Act, therefore, require, preambularly, according, to its various expressions, an expansive interpretation. The effort has, therefore, to be to include, rather than exclude, workmen – and, equally, establishments – from the fold of the ID Act. If, therefore, governmental departments which, otherwise, may not be capable of being regarded as 'industries', are industries for the purposes of the ID Act, that is only to ensure that the petty workmen, engaged in the establishment, would have access to the Labour Court and the Industrial Tribunal to ventilate their service grievances, and would not have to subject themselves to a protracted and expensive litigative process, entailing, in its wake, burdensome expenses. It is necessary to bear, in mind, this aspect, while examining whether any particular establishment ought, or ought not, to be regarded as 'industry', for the purposes of the ID Act. Any colouring, of the judicial vision, by the commonplance understanding of 'industry', while examining the issue, is likely to result in a palpably erroneous conclusion.

Other aspects

79. In examining the other aspects of the controversy, the Court is required to be conscious of its limitations, while exercising its power of judicial review, over an award of the industrial adjudicator. I have, in

D.D.A. v. Mool Chand[34], as well as in other decisions, had occasion to opine on this issue. In ***Mool Chand***[34], I have, following the decisions in ***Management of Madurantakam Cooperative Sugar Mills Ltd. v. S. Viswanathan***[35], ***P.G.I of Medical Education and Research, Chandigarh v. Raj Kumar***[36] and ***M.P State Electricity Board v. Jarina Bee***[37], culled out the following propositions:

(i) The Labour Court/Industrial Tribunal is the final fact finding authority.

(ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.

(iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.

(iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

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[34] **245 (2017) DLT 437**
[35] **(2005) 3 SCC 193**
[36] **(2001) 2 SCC 54**
[37] **(2003) 6 SCC 141**

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

80. The merits of the controversy, in the present petitions, has to be examined in the light of these propositions.

Were the respondents "workmen"? Have they worked for 240 days in the years immediately preceding their date of disengagement?

81. These two aspects may be examined together.

82. The respondents' contention is that they were engaged, by the petitioner, for casual unskilled work of clerical nature, and had served the petitioner for a period of 240 days in the year immediately preceding their date of disengagement. To this, the petitioner has, in its written arguments, before the learned Tribunal, averred thus:

> "1. That *the petitioner was hired or called for performing the casual/intermittent nature of work and was engaged in this office as and when there was any such requirement… The Petitioner was issued the experience certificate dated 22-12-2008 on his own request for the work performed during the period of his engagement. It is submitted that the certificate issued by the office clearly indicates that he has worked as a daily basis casual labour.*
>
> 2. There is no official appointment order or identity cards has ever been issued to the petitioner for any particular post. He was engaged for work which was to be performed as and when required basis for 89 days only *through employment exchange many times.* (List provided by the Employment Exchange which was Exhibited as MW-1/2)."
>
> (Emphasis supplied)

83. Further, para 6 of the aforesaid written arguments, filed by the petitioner before the learned Tribunal, qua the respondent in WP (C) 3495/2015, avers thus:

> "6. That the petitioner was engaged for the following periods to perform the job of casual and seasonal in nature as detailed below:
>
> 04.08.2006 to 29.12.2006
>
> 01.03.2007 to 31.07.2007
>
> 08.08.2007 to 31.08.2007
>
> 08.08.2007 to 10.12.2007
>
> 17.12.2007 to 11.03.2008
>
> *14.03.2008 to 13.11.2008*
>
> *15.11.2008 to 31.03.2009*"
>
> (Emphasis supplied)

84. This amounts to a clear and categorical admission, on the petitioner's part, that the said respondent had, during the period of one year prior to their date of disengagement, served the petitioner for as many as 364 days, with 1 day's break on 14th November, 2008.

85. Similarly, the record of the learned Tribunal discloses that Rama Kant (the respondent in WP (C) 3496/2015), Dheeraj Kumar (the respondent in WP (C) 3497/2015), Santosh Kumar (the respondent in WP (C) 3498/2015), Sandeep Kumar (the respondent in WP (C) 3499/2015) and Sanjeev Kumar (the respondent in WP (C) 3536/2015), served the petitioner for 355, 361, 344, 361 and 325 days, respectively, during the

period of one year immediately preceding 31st March, 2009, when they were disengaged by the petitioner.

86. Each of the respondents in these writ petitions, therefore, served the petitioner for more than 240 days in the period of one year immediately preceding 31st March, 2009 which, by virtue of Section 25B (1) of the ID Act, amounts to "continuous service" for a period of one year. In view of the admitted position that the respondents were working as manual unskilled labour, for the petitioner, they were also eligible to be regarded as "workmen", within the meaning of the expression as defined in clause (s) of Section 2 of the ID Act.

87. No error of fact or law, much less any perversity, can, therefore, in my opinion, be attributed to the findings, of the learned Tribunal, in the impugned award, as would merit interference by this Court, in exercise of power of judicial review, under Article 226, or Article 227, of the Constitution of India.

Uma Devi[14] and its applicability

88. Mr. Mahajan also placed reliance on the well-known decision of the Supreme Court in ***Uma Devi***[14].

89. It has been authoritatively held, by the Supreme Court itself in several decisions, including ***Hari Nandan Prasad v. Employer I/R to Management of Food Corporation of India***[38] and ***Ajaypal Singh v.***

[38] **(2014) 7 SCC 190**

Haryana Warehousing Corporation[39] that ***Uma Devi***[14] would not apply to cases falling under Section 25F of the ID Act, concerned, as it was, more with the issue of regularisation than of retrenchment. In fact, a more recent judgement, rendered by three learned Judges of the Supreme Court in ***State of J & K vs District Bar Association, Bandipora***[40], has endorsed the following principles, postulated by an earlier decision rendered by two learned Judges in ***Maharashtra State Road Transport Corporation v Casteribe Rajya Parivahan Karamchari Sangathana***[41], even on the issue of the power of Labour Courts and Industrial Tribunals to direct regularisation, in the face of ***Uma Devi***[14]:

> "34. It is true that ***Dharwad District PWD Literate Daily Wages Employees' Assn. v. State of Karnataka, (1990) 2 SCC 396 : 1990 SCC (L&S) 274*** arising out of industrial adjudication has been considered in ***State of Karnataka v. Umadevi (3), (2006) 4 SCC 1*** and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in ***State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753*** leaves no manner of doubt that what this Court was concerned in ***State of Karnataka v. Umadevi (3)*** was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.
>
> 35. ***State of Karnataka v. Umadevi*** is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

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[39] **(2015) 6 SCC 321**
[40] **(2017) 3 SCC 410**
[41] **(2009) 8 SCC 556**

> 36. ***State of Karnataka v. Umadevi (3)*** does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. ***State of Karnataka v. Umadevi (3)*** cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

90. I am, therefore, of the opinion that ***Uma Devi***[14] cannot impact the jurisdiction, or power, of the Labour Court, or the Industrial Tribunal – or, for that matter, of this Court exercising power, by way of judicial review, under Article 227 of the Constitution of India – in a case such as the present.

91. The reliance, by Mr. Mahajan, on ***Uma Devi***[14] is, therefore, misplaced.

Section 25-F of the ID Act

92. There is no dispute about the fact that, at the time of their disengagement, the respondents were not paid one month's wage as well as retrenchment compensation, as required by Section 25-F of the ID Act. The petitioner has sought to contend that the respondents refused to accept the said payments, and that the said amounts were, in fact, deposited, with the Government accounts, after 90 days of the disengagement of the respective respondents. Mr. Mahajan could not, however, draw my attention to any evidence, led before the learned

Tribunal, indicating that the respondents had, in fact, refused to accept the said amounts. No such evidence appears to have been led, before the learned Tribunal, either.

93. Section 25-F of the ID Act is clear and categorical in its terms. It reads thus:

> "**25F. Conditions *precedent to* retrenchment of workmen. –** No workman employed in any industry who has been in continuous service for not less than one year under an employer *shall be* retrenched by that employer *until* –
>
> (a) the workman *has been given* one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman *has been paid* in lieu of such notice, wages for the period of notice;
>
> (b) the workman *has been paid*, *at the time of retrenchment*, compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of 6 months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."
>
> (Emphasis supplied)

94. Section 25-F is unequivocal, and brooks neither relaxation nor departure. The use of the words "until" and "at the time of retrenchment", as also the expression "has been", makes it abundantly clear, that one month's notice in writing or, in the alternative, one month's wages *and* retrenchment compensation computed in accordance with clause (b) of Section 25-F, are mandatory preconditions, before a workman can be validly retrenched. Retrenchment, in violation thereof, is invalid and

illegal, and entitles the workman to a declaration to the said effect, as well as to consequential relief. The act of the petitioner in depositing the wages of the respondent-workmen, with the Government, 90 days after the date of their disengagement, was clearly in violation of Section 25-F. The inevitable consequences, of this transgression of the law, must follow.

95. In the circumstances, this Court finds no occasion to depart from the findings, of the learned Tribunal, regarding infraction, by the petitioner, of Section 25-F of the ID Act, while disengaging the respondents from service.

Relief

96. As a sequitur to the above discussion, the learned Tribunal must be said to have acted correctly, in holding that the respondent had been retrenched in violation of the mandate of Section 25-F of the ID Act.

97. Mr. Mahajan has, however, sought to contend that reinstatement of the respondents would not be possible, as no vacancies remained, in which they could be accommodated. This argument is incomprehensible, and is, on the face of it, contrary to the plea, of the petitioner, that the respondents were only engaged intermittently, as per requirements. In case, having illegally retrenched the respondents, if the petitioner has proceeded to fill up all "vacancies", the respondents cannot be made to suffer.

98. It is seen, from the grounds in the writ petition, that the petitioner has sought to contend that the learned Tribunal could not have directed regularisation of the respondents, by the petitioner. No such direction has been issued by the learned Tribunal. The learned Tribunal has merely directed reinstatement of the respondents with partial back wages. These are inevitable sequelae, to a determination that the respondent had been illegally retrenched, by the petitioner, in violation of Section 25-F of the ID Act. No exception, on facts or in law, can possibly be taken thereto.

99. The respondents are young, and have been rendered jobless in the prime of life. They have been in near continuous service of the petitioner, and the periods for which they have served the petitioner belie, to a large extent, the petitioner's submission that their engagement was purely sporadic or temporary. I see no reason, therefore, to modify, in any manner or to any extent, the directions issued by the learned Tribunal.

100. In view of the fact that I have adjudicated on the merits of the matter, and find the impugned order to be inexceptionable, I refrain from examining the issue of maintainability, as advanced by the respondents.

Conclusion

101. As a result, these writ petitions are dismissed. The petitioner is directed to take the respondents back in service, within a period of two weeks from the date of receipt, by it, of a certified copy of this judgement.

102. The amounts deposited by the petitioner, in this Court, during the pendency of these writ petitions, along with the interest, if any, accrued thereon, shall also be released, to the respondents, by the Registry of this Court, forthwith, subject to the respondents producing sufficient proof of their identity to the satisfaction of the learned Registrar-General.

103. These writ petitions are dismissed in the aforesaid terms, with no orders as to costs.

104. Pending applications, if any, stand accordingly, disposed of.

C. HARI SHANKAR, J.

JANUARY 20, 2020
dsn/HJ