CASE NO.:
Appeal (civil) 897 of 2002

PETITIONER:
State of U.P.

RESPONDENT:
Jai Bir Singh

DATE OF JUDGMENT: 05/05/2005

BENCH:
N. Santosh Hegde & K.G. Balakrishnan & D.M. Dharmadhikari & Arun Kumar & B.N. Srikrishna

JUDGMENT:
JUDGMENT

Dharmadhikari, J.

This present Appeal along with other connected cases has been listed before this Constitution Bench of five judges on a reference made by a Bench of three Honourable judges of this Court finding an apparent conflict between the decisions of two Benches of this Court in the cases of Chief Conservator of Forests v. Jagannath Maruti Kondhare, [1996] 2 SCC 293 of three judges and State of Gujarat v. Pratamsingh Narsinh Parmar, [2001] 9 SCC 713 of two judges.

On the question of whether 'social forestry' department of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of ''Industry'' under S. 2(j) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out differently the ratio of the seven judges' Bench decision of this Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa, [1978] 2 SCC 213 (shortly hereinafter referred to as the Bangalore Water case). The Bench of three judges in the case of Chief Conservator of Forests v. Jagannath Maruti Kondhare, (supra) based on the decision of Bangalore Water case came to the conclusion that 'Social Forestry Department' is covered by the definition of 'industry' whereas the two judges Bench decision in State of Gujarat v. Pratamsingh Narsinh Parmar, (supra) took a different view.

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

Various decisions rendered by this Court prior to and after the decision in Bangalore Water, (supra) on interpretation of the definition of the word 'industry' under the Industrial Disputes Act, 1947 have been cited before us. It has been strenuously urged on behalf of the employers that the expansive meaning given to the word 'industry' with certain specified exceptions carved out in the judgment of Bangalore Water, (supra) is not warranted by the language used in the definition clause. It is urged that the Government and its Departments while exercising its 'sovereign functions' have been excluded from the definition of 'industry'. On the question of 'what is sovereign function', there is no unanimity in the different opinions expressed by the judges in the Bangalore Water case. It is submitted that in a constitutional democracy where sovereignty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the Directive Principles of State Policy contained in Part IV of the Constitution are 'sovereign functions'. To restrict the meaning of 'sovereign functions' to only specified categories of so called 'inalienable functions' like Law and Order, Legislation, Judiciary,

Administration and the like is uncalled for. It is submitted that the definition of 'industry' given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of 'systematic organized activities' undertaken by the State and even individuals engaged in professions and philanthropic activities.

On behalf of the employers, it is also pointed out that there is no unanimity in the opinions expressed by the judges in the Bangalore Water case on the ambit of the definition of 'industry' given in the Act. Pursuant to the observations made by the judges in their different opinions in the judgment of Bangalore Water, (supra), the legislature responded and amended the Act by Industrial Disputes (Amendment) Act 1982. In the amended definition, certain specified types of activities have been taken out of the purview of the word 'industry'. The Act stands amended but the amended provision redefining the word 'industry' has not been brought into force because notification to bring those provisions into effect has not been issued in accordance with sub-section (2) of Section 1 of the Amendment Act. The amended definition thus remains on the statute unenforced for a period now of more than 23 years.

On behalf of the employers, it is pointed out that all other provisions of the Amendment Act of 1982, which introduced amendments in various other provisions of the Industrial Disputes Act have been brought into force by issuance of a Notification, but the Amendment Act to the extent of its substituted definition of 'industry' with specified categories of industries taken out of its purview, has not been brought into force. Such a piecemeal implementation to the Amendment Act, it is submitted, is not contemplated by sub-section (2) of Section 1 of the Amendment Act. The submission made is that if in response to the opinions expressed by the seven judges in Bangalore Water, case (supra), the legislature intervened and provided a new definition of the word 'industry' with exclusion of certain public utility services and welfare activities, the unamended definition should be construed and understood with the aid of the amended definition, which although not brought into force is nonetheless part of the statute.

On behalf of the employees, learned counsel vehemently urged that the decision in the case of Bangalore Water, (supra) being in the field as binding precedent for more than 23 years and having been worked to the complete satisfaction of all in the industrial field, on the principle of stare decisis, this Court should refrain from making a reference to a larger Bench for its reconsideration. It is strenuously urged that upsetting the law settled by Bangalore Water is neither expedient nor desirable.

It is pointed out that earlier an attempt was made to seek enforcement of the amended Act through this Court [see: Aeltemesh Rein v. Union of India, [1988] 4 SCC 54]. The Union came forward with an explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes, has been provided by law and therefore, the amended definition was not brought into force.

We have heard the learned counsel appearing on behalf of the employers and on the other side on behalf of the employees at great length. With their assistance, we have surveyed critically all the decisions rendered so far by this Court on the interpretation of the definition of 'industry' contained in Section 2(j) of the Act. We begin with a close examination of the decision in the case of Bangalore Water for considering whether a reference to a larger Bench for reconsideration of that decision is required.

Justice Krishna Iyer who delivered the main opinion on his own behalf and on behalf of Bhagwati and Desai JJ in his inimitable style has construed the various expressions used in the definition of 'industry'. After

critically examining the previous decisions, he has recorded his conclusions thus:

''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.

140. 'Industry', as defined in Section 2(j) and explained in Banerji, (supra), 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 i.e. making, on a large scale or 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 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 over reach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji (supra) 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 (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of 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 workman, the range of this statutory ideology must inform the reach or the statutory definition. Nothing less, nothing more.

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

(b) A restricted category of professions, clubs, co-operative and even gurukulas and title research labs, may qualify for exemption if, in imple 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 undertaking alone are exempt - not other generosity, compassion, developmental passion or project.

IV

143. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (supra) 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 (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

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

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

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

V

144. We overrule Safdarjung, (supra), Solicitors', case (supra), Gymkhana, (supra), Delhi University, (supra), Dhanrajgirji Hospital, (supra) and other ruling whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha, (supra) is hereby rehabilitated.''

[Underlining for emphasis]

What is to be noted is that the opinion of Krishna Iyer J on his own behalf and on behalf of Bhagwati and Desai JJ was only generally agreed to by Beg CJ who delivered a separate opinion with his own approach on interpretation of the definition of the word 'industry'. He agreed with the conclusion that Bangalore Water Supply and Sewerage Board is an 'industry' and its appeal should be dismissed but he made it clear that since the judgment was being delivered on his last working day which was a day before the day he was to retire, he did not have enough time to go into a discussion of the various judgments cited, particularly on the nature of sovereign functions of the State and whether the activities in discharge of those functions would be covered in the definition of 'industry'. What he stated reads thus:

''165. I have contended myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of

my learned brother Krishna Iyer and I also endorse his reasoning almost wholly, but even more because the opinion I have dictated just now must be given today if I have to deliver it at all. From tomorrow I cease to have any authority as a Judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those an what are known as ''sovereign'' functions'.

Beg CJ clearly seems to have dissented from the opinion of his other three brethren on excluding only certain State - run industries from the purview of the Act. According to him, that is a matter purely of legislation and not of interpretation. See his observations contained in paragraph 163:

''163. I would also like to make a few observations about the so-called ''sovereign'' functions which have been placed outside the field of industry. I do not feel happy about the use of the term ''sovereign'' here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in Keshavananda Bharati's case supported by a quotation from Earnest Barker's Social and Political Theory. Again, the term ''Regal'', from which the term ''sovereign'' functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term ''sovereign'', in relation to the activities of the State, is more accurately brought out by using the term ''governmental'' functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.''

[Emphasis supplied]

Since Beg CJ was to retire on 22.2.1978, the Bench delivered the judgment on 21.2.1978 with its conclusion that the appeal should be dismissed. The above conclusion was unanimous but the three Hon. Judges namely Chandrachud J on behalf of himself and Jaswant Singh J. speaking for himself and Tulzapurkar JJ., on the day the judgment was delivered i.e. as on 21.2.1978, had not prepared their separate opinions. They only declared that they would deliver their separate opinions later. This is clear from paragraph 170 of the judgment which reads thus:

''We are in respectful agreement with the view expressed by Krishna Iyer, J. In his critical judgment that the Bangalore Water Supply and Sewerage Board appeal should be dismissed. We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned Brother has dwelt''.

On the retirement of Beg CJ, Chandrachud J., took over as the CJ and he delivered his separate opinion on 7.4.1978 which was obviously neither seen by Beg CJ nor dealt with by the other three judges: Krishna Iyer, Bhagwati and Desai JJ. As can be seen from the contents of the separate opinion subsequently delivered by Chandrachud CJ, (as he then was), he did not fully agree with the opinion of Krishna Iyer J. that the definition of 'industry' although of wide amplitude can be restricted to take out of its purview certain sovereign functions of the State limited to its 'inalienable functions' and other activities which are essentially for self and spiritual attainments. Chandrachud J. seems to have projected a view that all kinds of organized activities giving rise to employer and employee relationship are covered by the wide definition of 'industry' and its scope cannot be restricted by identifying and including certain types of industries and leaving some other types impliedly outside its purview.

A separate opinion was delivered much later by Jaswant Singh J. for himself and Tulzapurkar J., after they had gone through the separate opinion given

by Chandrachud CJ (as he then was). The opinion of Jaswant Singh for himself and Tulzapurkar J. is clearly a dissenting opinion in which it is said that they are not agreeable with categories 2 and 3 of the Charities excluded by Brother Krishna Iyer J.

In the dissenting opinion of the two judges, the definition covers only such activities 'systematically and habitually carried on commercial lines for production of goods or for rendering material services to the community.' The dissenting opinion is on the lines of the opinion of Gajendragadkar J. in the case of State of Bombay v. Hospital Mazdoor Sabha, AIR (1960) SC 866 where it was observed that although the definition in the Act is very wide, 'a line has to be drawn in a fair and just manner' to exclude some callings of services or undertakings which do not fit in with the provisions of the Act. We may quote from the dissenting opinion of Jaswant Singh J. (for himself and for Tulzapurkar J.):

''However, bearing in mind the collocation of the terms in which the definition is couched and applying the doctrine of noscitur-a-sociis (which as pointed out by this Court in State of Bombay v. The Hospital Mazdoor Sabha, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. Expressed differently, it means that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it), we are of the view that despite the width of the definition it could not be the intention of the Legislature that categories 2 and 3 of the charities alluded to by our learned brother Krishna Iyer in his judgment, hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should fall within the pale of the definition. We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private enterpreneurs with the cooperation of employees 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. It is needless to emphasize that in the case of liberal professions, the contribution of the usual type of employees employed by the professions to be value of the end product (viz. advice and services rendered to the client) is so marginal that the end product cannot be regarded, as the fruit of the cooperation between the professional and his employees.''

The judges delivered different opinions in the case of Bangalore Water, (supra) at different points of time and in some cases without going through or having an opportunity of going through the opinions of other judges. They have themselves recorded that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning. In the opinions of all of them it is suggested that to avoid reference of the vexed question of interpretation to larger Benches of the Supreme Court it would be better that the legislative intervenes and clarifies the legal position by simply amending the definition of 'industry'. The legislature did respond by amending the definition of 'industry' but unfortunately 23 years were not enough for the legislature to provide Alternative Disputes Resolution Forums to the employees of specifies categories of industries excluded from the amended definition. The legal position thus continues to be unclear and to a large extent uncovered by the decision of Bangalore Water case as well.

Krishna Iyer J. himself, who delivered the main judgment in the Bangalore Water case, at various places in his opinion expressed that the attempt made by the Court to impart definite meaning to the words in the wide definition of 'industry' is only a workable solution until a more precise

definition is provided by the legislature. See the following observations:

''Our judgment here has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur.

3. Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out to the justice market and denying them the staying power to withstand the multi-decked litigative process, de facto denies social justice if legal drafting is vagarious, definitions indefinite and Court rulings contradictory. Is it possible, that the legislative chambers are too pre-occupied with other pressing business to listen to Court signals calling for clarification ambiguous clauses? A careful, prompt amendment of Section 2(j) would have pre-empted this docket explosion before tribunals and Courts. This Court, perhaps more than the legislative and Executive branches, is deeply concerned with law's delays and to devise a prompt delivery system of social justice.''

[Emphasis added]

It is to be noted further that in the order of reference made to the seven judges' Bench in the Bangalore Water Supply and Sewerage Board Case, the judges referring the case had stated thus:

''... the chance to confusion from the crop of case in an area where the common man has to understand and apply the law makes it desirable that there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands. Therefore, we think it necessary to place this case before the learned Chief Justice for consideration by a larger Bench. If in the meantime the Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly.''

[Emphasis supplied]

In the separate opinion of other Hon. Judges in Bangalore Water case, similar observations have been made by this Court to give some precision to the very wide definition of 'industry'. It was an exercise done with the hope of a suitable legislative change on the subject which all the judges felt was most imminent and highly desirable. See the following concluding remarks:-

'' We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vaporous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where I.L.O. norms are advancing and India needs updating.''

The separate opinion of Beg J. has the same refrain and he also observes that the question can be solved only by more satisfactory legislation. Chandrachud CJ (as he then was) in his separate opinion delivered on 7.4.1978 concurred partly but went a step further in expanding the definition of 'industry'. He has felt the necessity for legislative intervention at the earliest and has observed thus:-

''But having thus expressed its opinion in a language which left no doubt as to its meaning, the Court went on to observe that though Section 2(j) used words of a very wide denotation, ''it is clear'' that a line would have to be drawn in a fair and just manner so as to exclude some callings,

services or undertakings from the scope of the definition. This was considered necessary because if all the words used in the definition were given their widest meaning, all services and all callings would come within the purview of the definition including services rendered by a person in a purely personal or domestic capacity or in a casual manner. The Court then undertook for examination what it euphemistically called ''a somewhat difficult'' problem to decide and it proceeded to draw a line in order to ascertain what limitations could and should be reasonably implied in interpreting the wide words used in Section 2(j). I consider, with great respect, that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. The Parliament must step in and legislate in a manner which will leave no doubt as to its intention. That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels.''

[Emphasis added]

The dissenting opinion of Justice Jaswant Singh for himself and Tulzapurkar J. concludes with the following observations:

''In view of the difficulty experienced by all of us in defining the true denotation of the term 'industry' and divergence of opinion in regard thereto - as has been the case with this Bench also - we think, it is high time that the Legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops up from time to time in relation to the meaning of the aforesaid constituted which are driven to the necessity of evolving a working formula to cover particular cases.''

[Emphasis added]

The above observations contained in the dissenting view of Jaswant Singh J. have proved prophetic. The legislature has intervened and amended the definition of 'industry' in 1982 but for more than 23 years the amended provision not having been brought into force, the unamended definition with the same vagueness and lack of precision continues to confuse the courts and the parties. The inaction of the legislative and executive branches has made it necessary for the judiciary to reconsider the subject over and over again in the light of the experience of the working of the provisions on the basis of the interpretation in the Judgment of Bangalore Water case rendered as far back as in the year 1978.

In the case of Coir Board v. Indira Devi, [1988] 3 SCC 259, a two judges' Bench of this Court speaking through Sujata V. Manohar J. surveyed all previous decisions of this Court including the seven judges Bench decision in Bangalore Water, (supra) and passed an order of reference to the Chief Justice for constituting a larger Bench of more than seven judges if necessary. See the following part of that order:-

''Since the difficulty has arisen because of the judicial interpretation given to the definition of 'industry' in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by Bangalore Water Supply and Sewerage Board case it is an organization where there are employers and employees. The organization does some useful work for the benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

We do no think that such a sweeping tests was contemplated by the Industrial Disputes Act, nor do we think that every organization which does useful service and employs people can be labelled as industry. We,

therefore, direct that the matter be placed before the Hon. Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this Court in Bangalore Water Supply and Sewerage Board.''

When the matter was listed before a three judge Bench, in the case of Coir Board v. Indira Devi, [2000] 1 SCC 224 the request for constituting a larger Bench for reconsideration of the judgment in the Bangalore Water case was refused both on the ground that the Industrial Disputes Act has undergone an amendment and that the matter does not deserve to be referred to a larger Bench as the decision of seven judges in Bangalore Water case is binding on Benches of this Court of less than seven judges. The order refusing reference of the seven judges Bench decision by the three judge Bench in Coir Board, Ernakulam v. Indira Devi P.S., [2000] 1 SCC 224 reads thus:

''1. We have considered the order made in Civil Appeal Nos. 1720-21 of 1990. The Judgment in Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors., delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by a two Judge Bench of this Court, which is bound by the judgment of the larger Bench.

3. The appeals, shall, therefore, be listed before the appropriate Bench for further proceedings.''

Thus, the reference sought by the two judges to a larger Bench of more than seven judges was declined by the three judge Bench. As has been held by this Court subsequently in the case of Central Board of Dawoodi Bohra Community v. State of Maharashtra, [2005] 2 SCC 673, it was open to the Chief Justice on a reference made by two Hon. Judges of this Court, to constitute a Bench of more than seven judges for reconsideration of the decision in the Bangalore Water case (supra).

In any case, no such inhibition limits the power of this Bench of five judges which has been constituted on a reference made due to apparent conflict between judgments of two benches of this Court. As has been stated by us above, the decision of Bangalore Water is not a unanimous decision. Of the five Judges who constituted majority, three have given a common opinion but tow others have given separate opinions projecting a view partly different from the views expressed in the opinion to see the opinions delivered by the other judges subsequent to his retirement. Krishna Iyer J., and the two judges who spoke through him did not have the benefit of the dissenting opinion of the other two judges and the esparto, partly dissenting opinion of Chandrachud J. as those opinions were prepared and delivered subsequent to the delivery of the judgment in the Bangalore Water case.

In such a situation, it is difficult to ascertain 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 precedent which would require no reconsideration even though the judges themselves expressed the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in. The legislature subsequently amended the definition of the word 'industry' but due to the lack of will both on the part of the Legislature and the Executive, the amended definition, for a long period of 23 years, has remained dormant.

Sri Andhyarujina, learned Senior Counsel appearing for M/s National Remote Sensing Agency, which is an agency constructed by the Government in

discharge of it sovereign functions dealing with Defence, Research, Atomic Energy and Space falling in the excluded category in Clause (6) of the amended definition of 'industry' in Section 2(j), relies on the following decisions in support of his submission that where the unamended definition in the Act is ambigious and has been interpreted by the court not exhaustively but tentatively until the law is amended, the amendment actually brought into the statute can be looked at for construction of the unamended provisions. K. Brandy v. England Revenue Commissioner, (1921) 2 Kings Bench 403 followed in Yogender Nath Naskar v. CIT, [1969] 3 SCR 742 referred to and relied in Kajri Lal Agarwal v. UOI, AIR (1966) SC 1538-41; State of Bihar v. SK Roy, AIR (1966) SC 1995 at 1998 (para 6) and Thiru Manickam and Co. v. State of Tamilnadu, AIR (1977) SC 518 at para 10.

Shri Andhiyarujina further argues that by the Industrial Disputes Amendment Act of 1982, not only was the definition of 'industry' as provided in the clause amended but various other provisions of the principal Act were also amended. Sub-section (2) of Section 1 of the Amendment Act states that the Act ''shall come into force on such date as the Central Government may, by notification in the Gazette appoints.'' It is submitted that either the whole of the Act should have been notified for enforcement or not at all. The Amendment Act does not contemplate a situation where the Central Government may notify only some of the provisions of the Amendment Act for enforcement and withhold from enforcement other provisions of the Amendment Act. It is argued that such piecemeal enforcement of the Act is not permissible by sub-section (2) of Section 1 of the Amendment Act. Statutory Interpretation, 3rd Edition of FAB Bennian is relied on in support of the submission that when the Amendment Act mandates the Central Government to issue a notification specifying the date on which the provisions of the Act should be brought into force, such enabling provision implies that the enforcement of the Act has to be done within a reasonable time. Failure to enforce the Act for a period of more than 23 years is an unconstitutional attempt by the Executive Branch of the State to frustrate the clear intention of the legislature. Reliance has been placed by Senior Advocate, Shri Andhiyarujina, on the Court of Appeal decision in Regina v. Secretary of State for the Home Department, (1995) 2 weekly Law Reports page 2 which was upheld by the House of Lords in the decision reported in the same volume at page 464. It was held in that case thus:

''Having regard to the overriding legislative role of Parliament, the enacted provisions represented a detailed scheme approved by the legislature which until repealed stood as an enduring statement of its will; that while the provisions remained unrepealed it was not open to the Secretary of State to introduce a radically different scheme under his prerogative powers; and that, accordingly, in purporting to implement the tariff scheme, he had acted unlawfully and in abuse of those powers.''

The House of Lords in approving the decision of Court of Appeal held:

''That section 171(1) of the Criminal Justice Act 1988 imposed a continuing obligation on the Secretory of Sate to consider whether to bring the statutory scheme in sections 108 to 117 into force; that he could not lawfully bind himself not to exercise the discretion conferred on him; that the tariff scheme was inconsistent with the statutory scheme; and that, accordingly, the Secretary of State's decision not to bring sections 108 to 117 into force and to introduce the tariff scheme in their place had been unlawful.''

Senior Advocates Ms. Indira Jaising and Mr. Colin Gonsalves, Counsel appearing for the employees, very vehemently oppose the prayer made on behalf of the employers for referring the matter to a larger Bench for reconsideration of the decision in the Bangalore Water case. It is submitted that even though the definition in the Industrial Disputes Act has been amended in 1982, it has not been brought into force for more than 23 years and the reasons disclosed to the Court, when the enforcement of the Amendment Act was sought in the case of Altemesh Rein v. Union of

India, [1988] 4 SCC 54, is a sound justification. The stand of the union of India was that for the category of industries excluded in the amended definition no alternative Industrial Disputes Resolution forums could be created. For the aforesaid reason, the Central Government did not enforce the provisions of the Amendment Act which provided a new and restrictive definition of 'industry'. Learned counsel on behalf of the employees relied on A.K. Roy v. Union of India, [1982] 1 SCC 271 in support of their submissions that it is not open to the Court to issue a mandamus to the Government to bring into force the provisions of an Act. It is submitted that it is the prerogative of the Government in accordance with the provisions of Sections (1) and (2) of the Amendment Act to enforce the provisions of the Act when it finds that there are conditions suitable to take out of the purview of the definition of 'industry' certain categories of 'industries' in which the employees have been provided separate forums for redressal of their industrial disputes.

For the purpose of these cases, we need not go into the aforesaid side-issue because neither is there any substantive petition nor has a prayer been made in any of the cases before us seeking issuance of mandamus to the Government to publish notification in the Official Gazette for enforcement of the amended definition of 'industry' as provided in the Amendment Act of 1982. The only question before us is as to whether the amended definition, which is now undoubtedly a part of the statute, although not enforced, is a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of 'industry' in Section 2(j) of the act as it stands in its original form.

On behalf of the employees, it is submitted that pursuant to the decision in Bangalore Water case, although the legislature responded by amending the definition of 'industry' to exclude certain specified categories of industries from the purview of the Act, employees of the excluded categories of industries could not be provided with alternative forums for redressal of their grievances. The unamended definition of industry, as interpreted by the Bangalore Water case, has been the settled law of the land in the industrial field. The settled legal position, it is urged, has operated well and no better enunciation of scope and effect of the 'definition' could be made either by the legislature or by the Indian Labour Organization in its report.

After hearing learned counsel for the contesting parties, we find there are compelling reasons more than on before us for making a reference on the interpretation of definition of 'industry' in section 2(j) of the Act, to a larger Bench and for reconsideration by it, if necessary, the decision rendered in the case of Bangalore Water Supply and Sewerage Board. The larger Bench will have to necessarily go into all legal questions in all dimensions and depth. We briefly indicate why we find justification for a reference although it is stiffly opposed on behalf of the employees.

In the judgement of Bangalore Water, Krishna Iyer J. speaking for himself and on behalf of the other two Hon'ble judges agreeing with him proceeded to deal with the interpretation of the definition of 'Industry' on a legal premise stating thus:- 'a worker-oriented statute must receive a construction where conceptual keynote thought must be the worker and the community, as the Constitution has shown concern for them inter alia in Articles 38, 39 and 43'.

With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonize relationships between employers and employees for maintaining industrial peace and social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employers, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under

consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

Ms. Indira Jaising fervently appealed that in interpreting industrial law, in India which is obliged by the Constitution to uphold democratic values, as has been said in some other judgement by Krishna Iyer J., 'the Court should be guided not by 'Maxwell' but 'Gandhi' who advocated protection of the interest of the weaker sections of the society as the prime concern in democratic society. In the legal field, the Court has always derived guidance from the immortal saying of the great judge Oliver W. Holmes that 'the life of law has never been logic, it has been experience.' The spirit of law is not to be searched in any ideology or philosophy which might have inspired it but it may be found in the experience of the people who made and put it into practice.

In the case of Coir Board Ernakulam Kerala State and Anr. (Supra) Sujata V. Manohar J., speaking for the Bench while passing an order of reference to the larger Bench for reconsideration of the judgment of Bangalore Water Supply and Sewerage Board, (supra) has observed thus:-

''Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply and Sewerage Board (supra), it is necessary that the decision in Bangalore Water Supply and Sewerage Board case is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organizations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organizations but also to employees by the curtailment of employment opportunities.''

The above quoted observations were criticized on behalf of the employees stating that for making them, there was no material before the Court. We think that the observations of the learned Judges are not without foundation. The experience of judges in the Apex Court is not derived from the case in which the observations were made. The experience was from the cases regularly coming to this Court through the labour courts. It is experienced by all dealing in industrial law that over-emphasis on the rights of the workers and undue curtailment of the rights of the employers to organize their business, through employment and non-employment, have given rise to large number of industrial and labour claims resulting in awards granting huge amounts of back wages for past years, allegedly as legitimate dues of the workers, who are found to have been illegally terminated or retrenched. Industrial awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry. Such burdensome awards in many cases compel the employer having moderate assets to close down industrial causing harm to interests of not only the employer and the workers but also the general public who is the ultimate beneficiary of material goods and services from the industry. The awards of reinstatement and arrears of wages for past years by labour courts by treating even small undertakings of employers and entrepreneurs as industrial is experienced as a serious industrial hazard particularly by those engaged in private enterprises. The experience is that many times idle wages are required to be paid to the worker because the employer has no means to find out whether and where the workman was gainfully employed

pending adjudication of industrial dispute raised by him. Exploitation of workers and the employers has to be equally checked. Law and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their mutual benefit in the growth of industry and thereby serve public good. An over expansive interpretation of the definition of 'industry' might be a deterrent to private enterprise in India where public employment opportunities are scarce. The people should, therefore, be encouraged towards self-employment. To embrace within the definition of 'industry' even liberal professions like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainment, is experienced as a hurdle by professionals in their self pursuits. In carrying on their professions, if necessarily, some employment is generated, that should not expose them to the rigours of the Act. No doubt even liberal professions are required to be regulate and reasonable restrictions in favour of those employed for them can, by law, be imposed, but that should be subject of a separate suitable legislation.

If we adopt an ideological or philosophical approach, we would be treading on the wrong path against which learned Shri Justice Krishna Iyer himself recorded a caution in his inimitable style thus:-

''Here we have to be cautious not to fall into the trap of definitional expansionism bordering on reduction and absurdum nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. Courts do not substitute their social and economic beliefs for the judgment of legislative bodies.''

A worker oriented approach in construing the definition of industry, unmindful of the interest of the employer or the owner of the industry and the public who are ultimate beneficiaries, would be a one sided approach and not in accordance with the provisions of the Act.

We also wish to enter a caveat on confining 'sovereign functions' to the traditional so described as 'inalienable functions' comparable to those performed by a monarch, a ruler or a non-democratic government. The learned judges in the Bangalore Water Supply and Sewerage Board case seem to have confined only such sovereign functions outside the purview of 'industry' which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to 'law and order', 'defence', 'law making' and 'justice dispensation'. In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the Directive Principles of the State Policy in Part -IV of the Constitution of India. From that point of view, wherever the government undertakes public welfare activities in discharge of its constitutional obligations, as provided in part-IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of 'industry'. Whether employees employed in such welfare activities of the government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

In response to the Bangalore Water Supply and Sewerage Board case, the Parliament intervened and substituted the definition of 'industry' by including within its meaning some activities of the government and excluding some other specified governmental activities and 'public utility

services' involving sovereign functions. For the past 23 years, the amended definition has remained unenforced on the statute book. The government has been experiencing difficulty in bringing into effect the new definition. Issuance of notification as required by sub-section 2 of sub-section 1 of Amendment Act, 1982 has been withheld so far. It is, therefore, high time for the court to reexamine the judicial interpretation given by it to the definition of 'industry'. The Legislature should be allowed greater freedom to come forward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The inhibition and the difficulties which are being exercised by the legislature and the executive in bringing into force the amended Industrial Law, more due to judicial interpretation of the definition of 'industry' in the Bangalore Water Supply and Sewerage Board case, need to be removed. The experience of the working of the provisions of the Act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

The word industry seems to have been redefined under the Amendment Act keeping in view the judicial interpretation of the word industry in the case of Bangalore water . Had there been no such expansive definition of industry given in Bangalore Water case, it would have been open to the parliament to bring in either a more expansive or a more restructive definition of industry by confining it or not confining it to industrial activities other than sovereign functions and public welfare activities of the State and its departments. Similarly, employment generated in carrying on of liberal professions could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of industry in Bangalore Water case. The judicial interpretation seems to have been the one of the inhabiting factors in the enforcement of the amended definition of the Act for the last 23 years.

In the Bangalore Water case not all the judges in interpreting the definition clause invoked the doctrine of noscitur-a-sociis. We are inclined to accept the view expressed by the six judges' Bench in the case of the Management of Safdarjung Hospital, (supra) that keeping in view the other provisions of the Act and words used in the definition clause, although profit motive is irrelevant, in other to encompass the activity within the word industry the activity must be 'analogous to trade or business in a commercial sense'. We also agree that the mere enumeration of 'public utility services' in section 2(n) read with the First Schedule should not be held decisive. Unless the public utility service answers the test of it being an 'industry' as defined in clause (j) of section 2, the enumeration of such public utility service in the First Schedule to the Act would not make it an 'industry'. The six judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under section 2(n) of the Act and rightly observed thus:-

''When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore, it said that on industry could be declared to be a public utility service. But what could be so declared had to be an industry in the first place.''

The decision in the case of Management of Safdarjung Hospital (supra) was a unanimous decision of all the six judges and we are inclined to agree with the following observations in the interpretation of the definition clause:-

''But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and

consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods or wealth and material services.''

The six judges unanimously upheld the observations in Gymkhana Club case (supra):-

''... before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services''.

In construing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals like hospitals and education, concepts like right of the workers to go on 'strike' or the employer's right to 'close down' and 'lay off' are not contemplated because they are services in which the motto is 'service to the community'. If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

We are respectfully inclined to agree with the observation of Shri Justice P.B. Gajendragadkar [AIR 1964 SC 903 at pg. 906] in the case of Harinagar Cane Farm (supra):-

''As we have repeatedly emphasized, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties. .....''

We conclude agreeing with the conclusion of the hon'ble judges in the case of Hospital Mazdoor Sabha and Ors. (supra):-

''Though section 2(j) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some calling service or undertakings. ...''

[Emphasis supplied]

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt is rather a difficult problem to resolve more so when both the legislature and executive are silent and have kept an important amended provision of law dormant on the statute book.

We do not consider it necessary to say anything more and leave it to the larger Bench to give such meaning and effect to the definition clause in the present context with the experience of all these years and keeping in view the amended definition of 'industry' kept dormant for long 23 years. Pressing demands of the competing sectors of employers and employees and the helplessness of legislature and executive in bringing into force the Amendment Act compel us to make this reference.

Let the cases be now placed before Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgment of this Court in the case of Bangalore Water, (supra).