N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

STATE OF PUNJAB,—*Petitioner.*

versus

KULDIP SINGH and another,—*Respondents.*

Civil Writ Petition No. 2826 *of* 1981.

August 2, 1982.

Industrial Disputes Act (XIV of 1947)—Section 2(j)—Construction and maintenance of National and State Highways—Whether a Governmental activity—Such activity—Whether an 'industry'—Test for determining a governmental activity—Governmental activity—When an 'industry'—Phrase 'analogous to trade or business—Meaning and scope of—Mechanical Sub-Division of the Public Works Department—Such Department entrusted with the purchase and maintenance of road building machinery etc.—Whether an industry.

Held, that within the narrow confines of State or governmental activity alone, the matter admits of four-fold classification which may be categorised as follows :—

(1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.

(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.

(3) Organised activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

(4) The residuary organised governmental activity which may not come within the ambit of the aforesaid three categories.

As regards the first of the aforesaid categories, it is judicially settled beyond cavil that the regal or sovereign functions of the State despite their closest resemblance to systematic activity are clearly to be held beyond the pale of industry as defined in section 2(j) of the Industrial Disputes Act, 1947 even though they might well come within the ambit of the wide ranging words of the definition. On the opposite side of this spectrum is the second category of cases where the modern State undertakes activities for economic welfare of its citizens, which clearly and unmistakably partake of the nature of trading or business activity. The second category where the State enters the field of economic adventures clearly akin to trade and business would remain within the ambit of industry because of its intrinsic nature. There is then the third category of State activity, which though cannot possibly be stamped as strictly trade or business, yet bears some resemblance or analogy thereto. Even by giving the widest amplitude to the phrase "analogous to the carrying out of trade and business" or other economic ventures undertaken by the State welfare activity, such variegated fields like Education, Charitable Institutions (apart from strictly spiritual one) Recreational and Research Institutions, Hospitals and even professional activities may come within the net of an 'industry' under section 2(j), if they satisfied the requisite tests. Nevertheless, the distinction is that they must in terms retain some resemblance, some analogy to trade or business or the nature of activity at least being marginally economic as a pre-requisite before the said governmental activity can be rationally brought within the arena of an industry. Thus, the third category of activity which may come within the most liberal and wide ranging ambit of being analogous to or resemble trade or business or welfare economic venture is now within the ambit of industry, notwithstanding the fact that it may be conducted exclusively by the State. There further remains the fourth residuary category of governmental activity of the modern State, spread over a wide spectrum which does not come within either of the aforesaid three categories, i.e., it is neither the legal or sovereign function of the State, nor governmental activity of a strictly trade and business nature, nor something even remotely analogous to it. It is plain that this category of governmental activity which may be beyond the widest amplitude of trade, business or economic ventures or activities analogous thereto would consequently be outside the ambit of an industry. It is elementary that

governmental activity is inevitably organised and systematised and not chaotic. That being so, it is not rationally possible to subscribe to the view that apart from the very few limited sovereign or regal functions like Policing, Justicing, Legislating, Defence, Foreign affairs, all the rest of the Governmental activity would be an industry. The phrase analogous to trade or business provides the real key to the courts for determining as to what comes within the ambit of industry. Some kinship, some resemblance or some analogy to trade or business is the guide star for determining whether the activity is industrial or not. (Paras 11, 12, 13, 14, 15, 17, 18 and 19).

Held, that the creation, construction and maintenance of national and State highways, as a matter of history, as also of present day function is essentially a governmental activity in this country. In this context what deserves pointed highlighting is the fact that any meaningful road building activity today would involve the compulsory acquisition of land for its successful completion and which can only be done by exercise of the legislative power of the State by taking it away even from the original private owners for the larger public purpose of communication. Equally, the building of national and State highways involves the creation of bridges, culverts, etc., over large rivers or smaller streams, which vest in the Government and can only be done under the umbrella and cloak of the sovereign governmental powers. Plainly enough, therefore, the very creation of a meaningful roadways system far from being a trading or business activity may on the very threshold involve the exercise of the sovereign right of the State to compulsorily take away the property from the citizenery and to legislate for its creation and protection. Viewed from this angle it cannot be said that the construction of national and State highways which are progressively becoming the life line of the present day development of the country is analogous to commercial, trading or business activity Equally, a national or State road system is many times, though not invariably, linked inseparably to the defence of the country as well. That there may be roads which are primarily strategic is plain, but even otherwise, the rest of the road network within the country is sometime equally necessary for utilisation for its defence. Therefore, in a way road building is an activity far from being either trade or business in nature, or even remotely analogous thereto, but equally akin to the pristinely inalienable function of a constitutional Government for the defence of its citizenry. It, therefore, seems to be inconceivable that the net-work of the communication system, which, in a way are the cardiac arteries of the country's development, its defence system and at times impinging on its foreign relations and invariably involving the exercise of the sovereign power of acquisition of land etc. is a function which in this country can be passed on to the whimsicalities of private individuals or corporations. The acid test, whether the nature of the function is one

which the State could well have left to private enterprise, cannot even remotely be satisfied as regards the construction and maintenance of national and State highways by the Government. Thus, the establishment, construction and maintenance of National and State highways are essentially governmental functions. Further, this primary function neither partakes the nature of trade and business nor is remotely analogous thereto. It cannot possibly come within the ambit of an 'industry' as defined.

(Paras 23, 24, 25, 27, 28, 31 and 37).

Held, that if the main and dominant purpose, namely, the construction and maintenance of the National and State Highways is not an industry, then the closely connected activity of the Mechanical Sub-Division is not severable therefrom so as to come within the four corners of an industry. In the present day of modern technology, to say that road-building machinery like bulldozers, coal-tar-heaters, spreaders, etc., are not an integral part of road construction and its maintenance would be rather farcical. Looking at it today and the more so in the reasonably forseeable future, road-building machinery seems to be on the verge of becoming the corner-stone around which a useful internal communication system revolves. Thus, the purchase use and maintenance of road building machinery integrally allied to the construction and maintenance of arterial highways can in no way stand on a different footing.

(Para 39).

Case has been admitted to Full Bench by Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. S. Kang, on 25th August, 1980 in L.P.A. No. 535 of 1980. The Full Bench consisting of Hon'ble the Chief Justice S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. C. Mital, decided the case on merits on 2nd August, 1982.

Petition under Article 226 of the Constitution of India praying that this Hon'ble High Court be pleased to :—

(i) *Issue a writ of certiorari or any other appropriate writ to quash the impugned award (Annexure P-5).*

(ii) *Issue any other writ or order which this Hon'ble Court may deem fit or proper in the circumstances of the case.*

It is further prayed :—

(i) *That the filing of certified/original documents attached as Annexures be dispensed with and the documents are official and the same can be produced in the Court.*

(ii) *That issuance of advance notices to the respondents be dispensed with.*

(iii) *That the implementation of the impugned order may kindly be stayed till the final disposal of this writ Petition.*

M. J. S. Sethi, Additional A.G., with G. K. Vimal, Advocate, *for the Petitioner.*

Anand Swarup, Senior Advocate with Sunil Parti, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the construction and maintenance of National and State Highways by the State comes within the ambit of 'industry' as defined in section 2(j) of the Industrial Disputes Act is the common and the core question in this set of cases which have been referred to the Full Bench for an authoritative decision.

2. Learned counsel for the parties are agreed that in view of the identical and pristinely legal question herein this judgment would govern all these cases. It, therefore, suffices to advert to the facts in C.W.P. No. 2826 of 1981—*State of Punjab* v. *Kuldip Singh and another*, Kuldip Singh, respondent workman therein was appointed on *ad hoc* basis as a Sectional Officer in the Mechanical Circle of the Building and Roads Branch of the Public Works Department, Patiala, on the 25th of May, 1973. *Vide* letter P. 1, the appointment of the respondent was purely temporary and liable to be terminated without notice on either side and further it was for only six months or till the date of the joining of a candidate recommended by the Departmental Committee whichever was earlier. In accordance therewith the services of Shri Kuldip Singh respondent were terminated,—*vide* annexure P. 4 and he was relieved of his duties on the 30th of June, 1976. Nearly three years later on the 30th of January, 1979, the respondent workman made an application before the Presiding Officer, Labour Court, Ludhiana claiming re-instatement with continuity in service with full back wages on his old terms and conditions. His claim was controverted

and on the pleadings of the parties the Labour Court framed the following issues:—

1. Whether this Court has no jurisdiction to entertain this reference ?

2. Whether the respondent is not an industry as defined in the Industrial Disputes Act ?

3. Whether the claimant is not a workman as defined in the Industrial Disputes Act ?

4. Whether the termination of services of the workman was justified and in order ?

5. Relief.

Issues Nos. 1, 2 and 3 were dealt with together by the Labour Court and relying primarily on the *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others*, (1), it concluded as follows :—

> "Since P.W.D. B & R is held to be an industry and claimant to be a workman so any 'dispute arising between the management and the workman would be covered by the Industrial Disputes Act, which matter falls within the jurisdiction of the Labour Court. Thus I decide all the three issues against the management."

Proceeding further on merits under issue No. 4 also it was held that the services of the respondent could be terminated only after paying him retrenchment compensation and since this has not been done the said order of termination was not valid. Consequently, the relief of re-instatement with continuity of service was granted to the respondent-workman but in view of the fact that he was only a temporary employee he was not allowed any back wages. The State of Punjab has preferred the writ petition and strenuously challenged the findings of the Labour Court. On the other hand in C.W.P. No. 1227 of 1981, Kuldip Singh, workman has sought the added relief of full back wages as well.

(1) AIR 1978 S.C. 548.

3. Learned counsel for the parties had straightaway come to grips with the crux of the matter herein, namely whether the governmental activity of the contruction of National or State Highways and their maintenance comes within the ambit of an 'industry'. On behalf of the workmen the ancillary and the alternative question raised was that in any case the mechanical wing of the Building and Roads Branch utilising and maintaining the road building machinery would at least be within its scope.

4. That the issue here is one of wide legal dimensions is writ so large on its face that it would be unnecessary to emphasise the same. It would perhaps have been refreshing to examine the same on principle as also on the scope and construction of the language of the Industrial Disputes Act (hereinafter called the Act) itself. However, the constraints of judicial discipline would now prevent this High Court from entering this thicket, because the matter far from being *res-integra*, has been the subject matter of conflicting pronouncements by the final Court itself over the last three decades beginning with *D. N. Banerji* v. *P. R. Mukherjee and others*, (2) and concluding (one hopes finally) with the recent *locus classicus* on the subject in the *Bangalore Water Supply and Sewerage Board's* case (supra). Within this jurisdiction, therefore, the matter is narrowed down to the application of the discernible ratio in the four separate judgments recorded in this case. It deserves recalling that at the stage of the original pronouncement of judgment in this case on the 21st of February, 1978, Chief Justice Beg recorded a very brief judgment for the following reasons :—

> " I have contented 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 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 on what are known as 'sovereign' functions."

(2) AIR 1953 S.C. 58.

Further three of the learned Judges constituting the Bench at that stage observed as follows :—

> "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."

Later two opinions were rendered — one by Chandrachud, J. (as his Lordship then was) generally agreeing with the majority view in the main judgment of Krishna Iyer J., whilst Jaswant Singh, J., on behalf of himself and Tulzapurkar, J. took a contrary view and concluded as follows :—

> "In view of the difficulty experienced by all of us in defining the true denotion 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 term rendering it necessary for larger benches of this Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases."

The hope repeatedly expressed by the learned judges in the *Bangalore Water Supply* case (supra) that the legislature would intervene to resolve the tangled controversy has been belied so far, and seems to be so destined in the near future as well. The Courts therefore, remain (as rightly observed by Jaswant Singh, J.) in an area which is befogged and penumbral. Nevertheless one cannot shrink from the brink of doing one's duty to apply the law, as one construes it, however, great the obscurity thereof.

5. In view of the above, it is only within the narrow confines of the ratio as laid down by the final Court in the *Bangalore Water*

Supply Board's case (supra), that the matter has now to be examined. In terms it is indeed the extraction of the ratio thereof and its application to the present set of facts which is the only limited exercise to which this High Court can now resort.

6. In *Bangalore Water Supply case*, Krishna Iyer, J., who prepared the main judgment ultimately formulated the numerous principles in the concluding paragraph No. 161 of the report. Therefrom those relevant for our purpose are as under :—

"IV. 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* (3) or some departments are not productive of goods and services if isolated, even then the pre-dominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* (4) 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 S. 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. We overrule *Safdarjung* (5), *Solicitors' case* (6), *Gymkhana* (6A), *Delhi University* (supra)

(3) AIR 1963 S.C. 1973.
(4) AIR 1960 S.C. 675.
(5) AIR 1970 S.C. 1407.
(6) AIR 1962 S.C. 1080.
(6A) AIR 1968 S.C. 554.

Dhanrajgirji Hospital (7) and other rulings whose ratio runs counter to the principles enunciatetd above, and *Hospital Mazdoor Sabha* (8) is hereby rehabilitated."

Now, apart from the above the final seal of approval has also been placed by the Court on the earlier *Banerjee's* case and the *Hospital Mazdoor Sabha's* case (which has been specifically rehabilitated) along with *Nagpur Corporation v. its employees,* (Supra). Consequently it is the ratio of these three cases added with the principles formulated in *Bangalore Water Supply case* (supra) which now hold the field and call for application.

7. Inevitably one must just turn to the statutory fountain-head of the definition of 'industry' in section 2(j) of the Act:—

"2(j) 'industry' means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

What herein deserves highlighting is the fact that the aforesaid definition is couched in language of such wide amplitude that if liberally interpreted it can bring within its sweep virtually everything under the sky. That this wide ranging definition has to be judicially constricted to give it a meaningful application is now so authoritatively settled that it is unnecessary to examine the matter on principle. This is implicit in the earliest authoritative judgment on the point in *D. N. Banerji's case* but has been more explicitly highlighted in the following words in the *Hospital Mazdoor Sabha's* case (which has now been specifically rehabilitated in the *Bangalore Water Supply* case (supra):—

"It is clear, however, that though section 2(j) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings services or undertakings. If all the words used are given

(7) AIR 1975 S.C. 2032.
(8) AIR 1960 S.C. 610.

their widest meaning, all services and all callings would come within the purview of the definition, even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word 'service' is intended to include service howsoever rendered in whatsoever capacity and for whatsover reason. *We must, therefore, consider 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)*, and that no doubt is a somewhat difficult problem to decide."

The aforesaid view was then reiterated in the *Nagpur Corporation's* case (supra) in the following words :—

"* * *. So construed, every calling, service, employment of an employee or any business, trade or calling of an employer will be an industry. *But such a wide meaning appears to overreach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds,* having regard to the aim, scope and the object of the whole Act."

And lastly Krishna Iyer, J., in *Bangalore Water Supply* case has himself concluded as follows :—

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

(a) *'undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment, so also, service, calling and the like.* This yields the interference that all organised 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."*

It would be plain from the above that now there has to be a judicial shrinkage of the otherwise unlimited width of the definition of 'industry' in section 2(j) of the Act. Consequently the argument on the mere plain language of the definition is no more open in view of the authoritative limitations and constrictions placed thereon by the aforesaid judgments of the final Court. These limitations, as authoritatively observed, are both contextual and also associational and take their hue from the surrounding context in which they have been employed as also the larger purposes of the Act. Therefore, it is within the sphere of this judicial shrinkage of the statutory definition of 'industry' that the matter has now to be examined within this jurisdiction.

8. Now it is against this back—of the contextual and associational shrinkage of the width of the definition of 'industry' that it calls for highlighting that in the *Bangalore Water Supply's case* (supra) their Lordships had viewed the matter against the widest spectrum in order to lay down the broad general guidelines for determining what may well come within the ambit of this definition and what would be clearly outside the same. After an exhaustive discussion (in paragraphs 112 to 124) it was held that Education (whether by the State or private organization), charitable Institutions (paragraphs 125 to 133), Research Institutions, Recreational Clubs like the Delhi Gymkhana and Cricket Club of India (paragraphs 137 to 147), and co-operative undertaking carrying on activities which may be analogous to trade and business might well come within the ambit of an industry under section 2(j) of the Act. The contrary view taken by Hidayatullah, C.J., in the *Safdarjung's case* (supra) was overruled after an exhaustive discussion (in paragraph 151 to 157).

9. Now, as against the broad formulation of deducible principles spelt out in paragraph 161 in the *Bangalore Water Supply's case* (supra), what falls for determination here is a narrow and particularized question. The pristine issue which faces this Full Bench is not generally what is industry, but is confined firstly to State and governmental activity alone, and then as to when such activity would come within the ambit of the definition of 'industry' under section 2(j) of the Act. It calls for reiteration that in the

Bangalore Water Supply's case (supra), the matter was viewed in a larger and total perspective and not on the narrower focus which is called for in the present case. Indeed, Krishna Iyer, J., in paragraph 46 of the report, posed the following pointed question :—

> "Are governmental functions, *stricto sonam,* industrial and if not, what is the extent of the immunity of instrumentalities of Government?"

However, he did not tarry to render a complete or conclusive answer thereto apart from one corollary that the sovereign and regal functions of the State would necessarily be excluded from the ambit of industry whilst economic adventures undertaken by Government or statutory bodies would be within the same. Consequently, it is patent that the *Bangalore Water Supply's case* (supra) cannot cover the issue before us on all fours though, undoubtedly, the principles formulated therein would provide an unerring pointer for the solution of the problem.

10. As I see it, the crux of the problem before us is as to when governmental functions *stricto sensu* (as against private entrepreneurs) would also come to fall within the ambit of industry and what are the tests to be applied for determining the same.

11. Now, it appears to me that within the narrow confines of State or governmental activity alone, the matter admits of a four-fold classification in this context. For the sake of terminological exactitude, these may be categorised as follows :—

(1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.

(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.

(3) Organized activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

(4) The residuary organised governmental activity which may not come within the ambit of the aforesaid three categories.

12. Now, as regards the first of the aforesaid categories, it is judicially settled beyond cavil that the regal or sovereign functions of the State despite their closest resemblance to systematic activity are clearly to be held beyond the pale of industry as defined in section 2(j) of the Act even though they might well come within the ambit of the wide ranging words of the definition. This indeed is so settled that it would be wasteful to elaborate the matter on principle or statute. It was categorically observed in *The State of Bombay and others* v. *The Hospital Mazdoor Sabha and others* (supra), as follows :—

> "It would be possible to exclude some activities from S. 2(j) without any difficulty. Negatively stated, the activities of the Government which can be properly described as regal sovereign activities are outside the scope of S. 2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute."

And reiterated in the Nagpur Corporation's case (supra) as under:—

> "It could not have been, therefore, in the contemplation of the Legislature to bring in the regal functions of the State within the definition of 'industry' and thus confer jurisdiction on Industrial Courts to decide disputes in respect thereof. We, therefore, exclude the regal function of a State from the definition of 'industry'."

13. The aforesaid enunciations of the law have found unreserved affirmance at the hands of the learned Judges in the *Bangalore Water Supply's case* (supra). It must, therefore, be concluded that the sovereign and regal functions of the State (however much they may tend to come within the wide ranging words of section 2(j) of the Act) are to be judicially excluded from the ambit of industry.

14 On the opposite side of this spectrum is the second category of cases where the modern State undertakes activities for

economic welfare of its citizens, which clearly and unmistakably partake of the nature of trading or business activity. Herein when the Government designedly and deliberately enters the arena of trade and business it would be plain that it cannot seek any exemption merely because such an activity, which would normally and easily have been carried on by the private enterprise, is conducted through governmental agency. An easy example would be where the State itself enters the field of retail or the wholesale trade for the supply of commodities to the citizens. To recall a homely example, recently the State of Punjab opened a network of private retail shops under the PUNSUP scheme for making available to the citizenry certain basic human wants. Such activity normally is conducted by the petty shopkeepers. Obviously because this very business activity is now done by the Government would not warrant it to be treated differently or in a favourable discriminative manner. Such activity would thus be clearly within both the spirit and letter of the definition of Section 2(j). Again to take an example at the national level, the Central Government in 1968 nationalised the banking activities at the larger level. Undoubtedly banking was and has been a pristinely, business activity and merely by taking over the same, the State cannot alter the very nature of such an activity and even in its hands it would continue to be within the ambit of industry. It would thus be plain that the second category where the state enters the field of economic adventures clearly akin to trade and business, such an activity because of its intrinsic nature would remain within the ambit of industry. This would be noticed more elaborately later when construing the nature of the activity.

15. There is then the third category of State activity, which though cannot possibly be stamped as strictly trade or business, yet bears some resemblance or anology thereto. This is the slightly penumbral area, which appears to be now authoritatively covered by what was originally laid down in *Bannerji's* case and later elaborated and affirmed in *Hospital Mazdoor Sabha*, and *Nagpur Corporation's* cases and ultimately bearing a final seal of approval in the *Bangalore Water Supply Board's* case. It must be highlighted that *Banerji's* case recently seems to have secured such unstinted and unreserved confirmation that the observations therein

must virtually be deemed as authoritative as those in the *Bangalore Water Supply Board* case. The Constitution Bench's observations unanimously expounded by Chandrasekhara Aiyer J., were extolled by Krishna Iyer J. repeatedly in *Bangalore Water Supply Board's* case as :

> "*Banerji* we take as good, and anchored on its authority, we will examine later decisions to stabilize the law on the firm principles gatherable therefrom, rejecting erratic excursions.....
>
> Therefore, our task is not to supplant the ratio of *Banerji* but to straighten and strengthen it in its application, away from different deviations and aberrations.
>
> (*Paragraph* 61)
>
> To be fair to *Banerji* with the path-finding decision which conditioned and canalised and fertilized subsequent juristic-humanistic ideation, we must show fidelity to the terminological exactitude of the seminal expression used and searched carefully for its import. The prescient words are: *branches of work* that can be said to be *analogous to the carrying out of 'trade or business..*
>
> (*Paragraph* 64).
>
> Now, the cornerstone of industrial law is well laid by *Banerji*, supported by the Lord Mayor of the City of Melbourne."

And lastly in paragraph 66:

> "*So some kinship through resemblance to trade or business, is the key* to the problem, if *Banerji* is the guide star.
>
> Partial similarity postulates selectivity of characteristics for comparability. Wherein lies the analogy to trade or business, is then the querry".

16. With the aforesaid adolatory affirmance of the ratio in *Banerji's* case, it is inevitable to go back to this very source. Equally

one must remind oneself that *Banerji's* case was decided by a Constitution Bench of five Judges and, therefore, has primacy over any observation directly deviating therefrom in the later smaller Benches. Therein it was concluded as follows :—

> "Having regard to the definitions found in our Act, the aim or objective that the Legislature had in view, and the nature, variety and range of disputes that occur between employers and employees we are forced to the conclusion that the definition in our Act include also disputes that might arise between municipalities and their employees *in branches of work that can be said to be analogous to the carrying out of a trade or a business.*"

17. Now it is true that in the *Nagpur Corporation's* case the ambit of the phrase "analogous to carrying out of the trade and business" was construed with generous liberality, but nevertheless, it cannot be said that they cut the same adrift from the moorings to which it stood anchored. This is manifest from the later impression of the matter in the *Bangalore Water Supply Board's* case, wherein by giving the widest amplitude to the phrase "analogous to the carrying out of the trade and business" or other economic ventures undertaken by the State welfare activity, it was held that such variegated fields like Education, Charitable Institutions (apart from strictly spiritual one.) Recreational and Research Institutions, Hospitals and even professional activities may come within the nest of an 'industry' under Section 2(j), if they satisfied the requisite tests. Nevertheless the distinction was in terms retained with some resemblance, some analogy to trade or business, or the nature of activity atleast being marginally economic, as a pre-requisite before the said governmental activity can be rationally brought within the arena of an industry.

18. Consequently it must be held that this third category of activity, which may come within the most liberal and wide ranging ambit of being analogous to or resemble trade or business or welfare economic venture is now authoritatively within the ambit of industry, notwithstanding the fact that it may be conducted exclusively by the State.

19. There further remains the fourth residuary category of governmental activity of the modern State, spread over a wide

spectrum which does not come within either of the aforesaid three categories, i.e., it is neither the regal or sovereign function of the State, nor governmental activity of a strictly trade and business nature, nor something even remotely analogous to it. Wherein does this category fall? The answer appears to be plain that this area of governmental activity, which may be beyond the widest amplitude of trade, business or economic ventures, or activities analogous thereto would consequently be outside the ambit of an industry. Indeed if it were not so, the whole erudite discussion on the point in the *Bangalore Water Supply Board's* case, and the ding-dong swing of the judicial pendulum ranging from *Banerji's case* for three decades till today would seem to be an exercise in futility. It is elementary that governmental activity is inevitably organised and systematised and not chaotic. That being so, on the contrary view the issue would become so simpliciter as to hold that apart from the very few limited sovereign or regal functions like Policing, Justicing, Legislating, Defence, Foreign affairs, all the rest of the Governmental activity would be an industry. I do not think that it is rationally possible to subscribe to any such abstraction and indeed the longest line of precedent in the final Court and unending mass thereof in the High Court has at no stage ever said so. I would notice that even the most vehement amongst the learned counsel for the respondents did not at any stage take up the extreme and if I may say so, the illogical position that apart from regal and sovereign functions, all other governmental activity is industrial in nature Indeed this seems to have been authoritatively recognised in the following words of Krishna Iyer, J. in *Bangalore Water Supply Board's case* :—

> "Thus it is well recognised that public servants in the key sectors of Administration stand out of the industrial sector. The Committee of Experts of the ILO had something to say about the carving out of the public servants from the general category."

And his express approval and explanation of *Banerji's case* in this context is in the following words :—

> "The limiting role of Banerji (supra) must also be noticed so that a total view is granted. For instance

> 'analogous to trade or business' cuts down 'undertaking', a word of fantastic sweep. Spiritual undertakings, casual undertakings, domestic undertakings, was waging policing, justicing, legislating, tax collecting and the like are, *prima facie*, pushed out. Wars are not merchantable nor justice saleable, nor divine grace marketable. *So the problem shifts to what is "analogous to trade or business.."*

It seems plain from the above that the real problem herein is as to what is the true import to be attributable to the phrase 'analogous to trade or business'. As observed in the *Bangalore Water Supply Board's case*, these indeed are the prescient words. They alone provide the real key to the problem before the courts. As has been authoritatively said by Krishna Iyear, J., some kinship, some resemblance or some analogy to trade or business is the guide star for determining whether the activity is industrial or not.

19-A. It would thus follow that the residuary and 4th category of governmental activity, as enumerated in para 11 above, which is neither strictly 'trade or business in nature nor even remotedly resembling or analogous thereto, would be a governmental function outside the ambit of the term 'industry' as defined in section 2(j) of the Act.

20. Now testing the matter on the anvil of the aforesaid fourfold classification of the governmental activity, the core question is whether in the construction of the life-line of the nation's communication system like National highways, State highways and their maintenance, the State is indulging in a trading or business activity, or in any case something analogous thereto, even if the later aspect is viewed with the widest liberality. I would pointedly notice that with illimitable fairness all the learned counsel for the respondents straightway conceded that the construction and maintenance of the National highways or State highways and their connecting systems cannot be *stricto sensu* labelled as trading or business activity. The highest that was sought to be advocated on their behalf was that this was something which can be stretched to come within the arena of an activity analogous to trade, business or an economic venture.

21. It is obvious that it would be more than wasteful to examine this issue in a doctrinaire fashion. It has to be analysed and adjudicated upon in the particular conditions of this country and its constitution. Attention in this context may first be drawn to entry 23 of the Union List, which is in the following terms:—

> "23. Highways, declared by or under law made by Parliament to be national highways".

And again to entry 13 of the State List (List II to Seventh Schedule to the Constitution):—

> "13. Communications, that is to say roads, bridges, ferries, and other means of communication not specified in list I."

22. It would be manifest from the above that read with Article 246, our Constitution very specifically confers legislative powers on Parliament and the Legislatures of the States to make enactments with regard to National Highways, or other State Highways, roads, bridges, etc. Plainly enough the construction and maintenance of these are recognised as a governmental function of adequate significance, to find a specific place in the Constitution itself. It is perhaps true that these functions would not come within the limited scope of the sovereign and regal functions, which have been termed as the primary and unrivalled right of a constitutional Government. Nevertheless in the face of the letter of the statute itself it cannot be denied that this State function is one which is both recognised and provided for by the Constitution of this country.

23. Again it seems to be undisputed that the creation, construction and maintenance of national and State Highways, as a matter of history, as also of present day function, is essentially a governmental activity in this country. Even though pointedly pressed, learned counsel for the respondents could quote no example either ancient or modern where the life-lines of the nation's communication has been entrusted to hands other than the Government. On the other hand the learned Additional Advocate General Mr. Mohinderjit Singh Sethi was not wrong in pointing out that even

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more than five centuries ago the Grand Trunk Road extending from Peshawar to Bengal was first built entirely as a State enterprise by Sher Shah Suri, which has recently been aptly renamed after him. Indeed at one stage the learned counsel for the respondents were compelled to concede that at least within this country the creation, construction and the maintenance of National and State Highways and even their connecting network has been a pristinely governmental function.

24. Now in the aforesaid context what deserves pointed highlighting is the fact that any meaningful road building actively today would involve the compulsory acquisition of land for its successful completion and which can only be done by exercise of the legislative power of the State by taking it away even from the original private owners for the larger public purpose of communications. Equally the building of National and State Highways involves the creation of bridges, culverts, etc., over large rivers or smaller streams, which vest in the Government and can only be done under the umbrella and cloak of the sovereign governmental powers. Plainly enough, therefore, the very creation of a meaningful roadways system far from being a trading or business activity may on the very threshold involve the exercise of the sovereign right of the State to compulsorily take away the property from the citizency, and to legislate for its creation and protection. Viewed from this angle can it be said that the construction of National and State Highways which are progressively becoming the life line of the present day development of the country is analogous to commercial, trading or business activity ? I believe the answer to this on ordinary canons of logic appears to be in a categoric negative.

25. Equally one has to remind oneself that a National or State road system is many times, though not invariably linked inseparably to the defence of the country as well. That there may be roads which are primarily strategic is plain, but even otherwise the rest of the road network within the country is sometime equally necessary for utilisation for its defence. In the present day conditions no meaningful defence or warfare can be conducted in areas which may be totally inaccessible or not covered by roads. Therefore in a way road building is an activity far from being either trade or business in nature, or even remotely analogous thereto, but equally akin to

the pristinely inalienable function as a constitutional Government for the defence of its citizenry. Indeed it has to be recalled that in many areas the construction of roads and their maintenance far from being an economic or trading or business venture is so oriented to defence or development so as to make deep inroads by way of deficit financing into State revenues. The construction of the strategic roads by the Border Roads Organisation in the inaccessible and inhospitable regions bordering on the Tibet-China border are clear examples of this governmental activity which would be motivated entirely by defence and foreign affairs considerations, rather than by any economic, trading or business considerations.

26. This matter also deserves examination on another authoritative touch stone which stands sanctified by the long line of the authoritative precedent of the final court. Right from *Banerji's case*, to the *Bangalore Water Supply Board's case* their Lordships seem to have repeatedly referred and approvingly quoted the observations of Isaacs, J., in *Federated Municipal and Shire Council Employees' Union of Australia* v. *The Lord Mayor Adderman Councillor and Citizens of the City of Malbourn and others* (10) and later in *Federated State School Teachers Association of Australia* v. *The State of Victoria* (11). In the tangled thicket of controversial judicial opinion Isaacs, J. also posed the following test in *Federated School Association's* case, which has been approvingly referred to in the *Bangalore Water Supply Board's* case:

> "The material question is: what is the nature of the actual function assumed—Is it a service that the State could have left to private enterprise and if so fulfilled should such a dispute be industrial ?"

27. Now I have already adverted to the pristine nature of the establishment, construction and maintenance of National and State Highways which is a pointed to the fact that the same would be an essential and primary function of the government. What may well be decisive now is to apply the aforesaid test—whether this is a

(10) 26--Commonwealth Law Reporter 508.
(11) 41—Commonwealth Law Reporter 569.

function which the State could have left to private enterprise? Can one today in the conditions in this country and in the light of its federal Constitution, say with any degree of plausibility that the very establishment and construction of the National and the State Highways and their maintenance is something which the State should barter away to a private citizen or a private Corporation? To my mind, the answer appears to be plainly in the negative. I have, in the earlier part of the judgment, already dilated on this aspect and it would be wasteful to be repetitive. It seems to me as inconceivable that the network of the communication system, which, in a way are the cardiac arteries of the country's development, its defence system, and at times impinging on its foreign relations, and invariably involving the exercise of sovereign power of acquisition of land, etc. is a function which in this country can be passed on to the whimsicalities of private individuals or Corporations.

28. From the above, it seems to follow inevitably that the acid test, whether the nature of the function is one which the State could well have left to private enterprise, cannot even remotely be satisfied as regards the construction and maintenance of national and State Highways by the Government.

29. I have so far confined myself within the parametres of our Constitution, the binding precedent of *Bangalore Water Supply Board's* case, and the conditions within our country, for examining the issue. However, the view I am inclined to take receives massive, if not conclusive, support from American Law. Despite the fact that it is the hallowed home of private enterprise, it seems to be well-settled in most jurisdictions in the United States that the establishment, construction and maintenance of public roads is a primary function of the government. Before adverting to individual cases, the law on the point is epitomised as under in Corpus-Juris Secundum (Volume 39):—

> "25. The establishment of highways is a governmental function. The power of providing highways for the use of the public *is a branch of the right of eminent domain*, which right is, as shown in Eminent Domain S.2, an inherent and necessary attribute of sovereignty existing independently

of constitutional provisions, although, as indicated in Eminent Domain, S.3 subject to regulation by constitutions."

* * * * *
* * * * *

"27. The necessity, propriety, or expediency of establishing public highways is primarily a legislative question rather than a judicial one; that is, it is for the legislature to determine that highways are necessary for public use and convenience and to provide for their establishment by local boards or courts."

* * * * *
* * * * *

"29. The establisment of highways is a governmental function of the State and the power rests primarily in the legislature, subject to constitutional restrictions, although the legislature may likewise subject to constitutional restrictions, delegate this power to other agencies as it may determine, such as minor political sub-divisions or local authorities, to be exercised only by reason of such statutory delegation and in the manner prescribed."

* * * * *
* * * * *

And again;

"36. It is competent for the legislature to establish a specific highways, or class of highways, without the intervention of any inferior agency. Where a highways is thus established it requires no act of acceptance on the part of anyone to make it a public highway; *it becomes such by act of the sovereign power by which it is established.*"

* * * * *
* * * * *

Then again, with regard to the particular uses of the sovereign power of Eminent Domain, the law has been stated in the following

terms, in Volume 29 of the Corpus Juris Seuundum :—

> "33. As a general rule, declared by the constitutions or statutes in some jurisdictions, public streets, highways, and roads are a public use for which private property may be *appropriated under the power of eminent domain. The establishment of public highways is one of the oldest and commonest of uses for which private property has been appropriated.*"
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> * * * * *
>
> * * * * *

30. Adverting now to the American Case Law, pride of place must inevitably be given to the undermentioned observation of Mr. Justice Harlan, delivering the opinion of the Supreme Court of United States in *Atkin* v. *Kansar* (12) :

> "The improvement of the boulevard in question was a work of which the state, if it had deemed it proper to do, could have taken immediate charge by its own agents; *for it is one of the functions of government to provide public highways for the conventence and comfort of the people.* Instead of undertaking that work directly, the state invested one of its governmental agencies with power to care for it. *Whether done by the state directly or by one of its instrumentalities, the work was of a public, not private character.*"

Again, in *Winerbrenner, Secretary of State* v. *Salmon et al,* (13), the Court of Appeals, observed as under :—

> "....But, the establishment, construction, and maintenance of public roads is a primary function of government". *Bonsal* v. *Cellott* (14). *See also Huffman* v. *State Roads Commission* (15).

(12) 191 US 207.
(13) 142 Atlantic Reporter 723 Maryland.
(14) 100 Md, 481, 60 A. 593 69 L.R.A. 914.
(15) 152 Md. 566, 137A 358.

To the same effect are the observations in *Alabama Great Southern. R. Co.* v. *Lianion* (15-A) (Albama); *Lee Country* v. *Mayor, Etc. of City of Smathville et al,* (16); *Iowa Ry. & Light Corporation* v. *Lindsey, Country Engineer,* (17); and, *De Capua* v. *City of New Haven et al,* (18). The aforesaid mass of precedent makes it plain that it is well-settled in the United States that the establishment, construction and maintenance of highways is a primary function of the government.

31. To summarise, it seems to be plain that the establishment, construction and maintenance of National and State highways are essentially governmental functions. Further, this primary function neither partakes the nature of trade and business nor is even remotely analogous thereto.

32. It goes to the credit of Mr. Anand Swaroop, learned counsel for the respondents, that he candidly conceded that, even apart from the five regal functions which have been judicially noticed, all other governmental activity cannot be labelled as necessarily industrial. It was not even remotely his stand that, apart from war-waging, policing, justicing, legislating and taxing, all the residual governmental activity was an industry within the meaning of section 2 (j) of the Act. However, when pointedly asked to cite an instance of any such governmental activity which, according to him, may be out of the ambit of an industry, he failed to give any meaningful example. Rather half-heartedly it was submitted that the purely administrative activity of the State may not come within the ambit of an industry and therefore the apex administrative secretariat of the States and the Central Government may be out of the net.

33. A closer analysis of the aforesaid stand, however, discloses its fallacy. That the higher administrative echelons of the Government are indivisibly integrated with its activity in the field would appear to be exiomatic. For instance, if the establishment, construction and maintenance of national and State Highways were to be

(15-A) 195 Southern Reporter 219.
(16) 115 South East Reporter 107 (Georgia).
(17) 231 North Western Reporter 461 (Jowa).
(18) 13 Atlantic Reporter 581 (connecticut).

of the employees seems to be rather elementary in governmental activity. Mostly, all such governmental activity has necessarily to be directed to some public interest and thus provides either services to the community or goods for its benefit. If these three tests are taken to be decisive, the end-result would be that all governmental activity even including the sovereign regal functions would come within the scope of industry and that, as already noticed, is nobody's case. It bears repetition that to be within the ambit of industry, governmental activity must, at least, be analogous to trade and business though both the word 'analogous' and the phrase "trade and business" may be construed with large liberality. It calls for highlighting that there must be an element of an economic venture in governmental activity before it can be brought within the four corners of an industry. If, even by remote analogy, the character of the activity is neither that of trade or business nor partakes any economic venture, then it necessarily is out of the ambit of industrial activity.

36. Lastly, the reliance of the learned counsel for the respondents on clause (12) of paragraph 20 of the report in *The Corporation of the City of Nagpur* v. *Its employees* (supra), wherein the Public Works Department of the Corporation was held to be within the ambit of an industry, must necessarily be adverted to. However, a close analysis would show that this in no way advances or aids the stand of the respondents. Therein, their lordships, after noticing in detail the scheme of the City of Nagpur Corporation Act, 1948, concluded as follows :—

> "In sort, a corporation is analogous to a big public company carrying out most of the duties which such a company can undertake to do with the difference that certain statutory powers have been conferred on the corporation for carrying out its functions more satisfactorily.
>
> With this background let us take each of the departments of the Corporation held by the State Industrial Court to be governed by the Act."

Now, it is plain from the above that the whole matter was viewed from the stand-point that the Corporation was in essence like a big company providing services to the city which could well be left to

held as an industry then obviously the administrative strata woven therewith must necessarily follow suit. The Secretary of the Public, Works Department (Buildings & Roads) and for ought one knows, even the Minister-in-charge thereof then must come equally within the ambit of an industry of such a rationale. This would be equally applicable to the Secretaries of the Government and even the Minister-in-charge of Departments of Industry and Commerce which are plainly enough either trade or business simpliciter or analogous to trade or business. The stand of the respondents' counsel thus exhibits such patent anamolous results. I would wish to recall that even the most extreme exponents of expanding the ambit of industry have not yet advocated that barring the sovereign regal functions, all other governmental functions are an industry.

33-A. In fairness to Mr. Anand Swaroop, I must notice that he had attempted to advocate three tests for determining whether the character of activity was industrial in nature. He submitted that these are :—

(i) there should be relationship of employer and employee.

(ii) a systematic organisation and utilization of the employees. and,

(iii) such activity should be geared to the production of goods and services to the community.

34. It was canvassed, the moment the aforesaid three tests are satisfied, the nature and the activity must be conclusively deduced as 'industrial'.

35. I am unable to subscribe to the somewhat dogmatic stand aforesaid. In the context of governmental activity, one can hardly visualise an instance where the employer and employee relationship. i.e., betwixt the Government and its employees would not exist Nor can it be said that such activity would not have a modicum of organisation behind it. Inevitably, it must conform to some kind of a system, unless one is willing to hold that governmental activity can be wholly chaotic in nature. A systematic organization and utilization

of the employees seems to be rather elementary in governmental activity. Mostly, all such governmental activity has necessarily to be directed to some public interest and thus provides either services to the community or goods for its benefit. If these three tests are taken to be decisive, the end-result would be that all governmental activity even including the sovereign regal functions would come within the scope of industry and that, as already noticed, is nobody's case. It bears repetition that to be within the ambit of industry, governmental activity must, at least, be analogous to trade and business though both the word 'analogous' and the phrase "trade and business" may be construed with large liberality. It calls for highlighting that there must be an element of an economic venture in governmental activity before it can be brought within the four corners of an industry. If, even by remote analogy, the character of the activity is neither that of trade or business nor partakes any economic venture, then it necessarily is out of the ambit of industrial activity.

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> With this background let us take each of the departments of the Corporation held by the State Industrial Court to be governed by the Act."

Now, it is plain from the above that the whole matter was viewed from the stand-point that the Corporation was in essence like a big company providing services to the city which could well be left to

private enterprise. At no stage whatsoever, the aspect of governmental activity *stricto sensu* and of a nature which cannot be left to private enterprise, was even remotely considered. It was in this peculiar context that their lordships even held that the Tax Department of the Corporation was an industry though it is settled beyond cavil that the taxing power of the Government is a severeign regal function which can never be brought within the ambit of an industry. Again, their Lordships noticed that the Public Works Department of the Corporation, apart from roads, was dealing with such menial and ministerial functions like the maintenance of drains public latrines, markets, buildings, etc., and employing time-keeper mates, carpenters, masons, blacksmiths and coolies. Specifically with regard thereto, they observed as under :—

> "This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of 'industry', satisfying both the positive and negative tests laid down by us in this regard."

It would be plain that, only after holding that the functions were of petty and ministerial nature and further that these could be equally and indeed preferably left to private enterprise, that their lordships upheld the finding of the State Industrial Court of the same being an industry. It is manifest that these considerations are not even remotely attracted here and none of the tests aforesaid would be at all applicable. The observations in *The Corporation of the City of Nagpur* (supra) made in the narrow confines and the particular context thereof, in no way, advance the case of the respondents.

37. To finally conclude on an analysis of the binding precedent in the *Bangalore Water Supply Board's* case, the language of Section 2(j) of the Act, and on principle, it must be held that the establishment, construction and maintenance of national and State Highways is an essential governmental function. It is in no way even remotely analogous to trade or business. Consequently, it cannot possibly come within the ambit of an 'industry' as defined. The answer to the question posed at the very out-set is thus rendered in the negative.

38. The ancillary question which must now be examined is that even if the construction and maintenance of roads is not an industry, yet the Mechanical Sub-Division of the Department of the Public

Works Department (Buildings and Roads) which is entrusted with the purchase and maintenance of road building machinery, etc., therefor, is a separable and ancillary activity which would nevertheless, be within the ambit of an industry.

39. It appears to me that the aforesaid stand must also fail on the analogy of the dominant purpose test. Once it is held, as I have already, that the main and dominant purpose, namely, the construction and maintenance of the National and State Highways is not an industry then the second aspect which calls for examination is whether the closely connected activity of the Mechanical Sub-Division is completely severable therefrom so as to come within the four corners of an industry. To my mind, in the present day of modern technology, to say that road-building machinery like bulldozers, coal-tar-heaters, spreaders, etc., are not an integral part of road construction and its maintenance would be rather farcical. Now looking at it today and the more so in the reasonably forseable future, road-building machinery seems to be on the verge of becoming the corner-stone around which a useful internal communication system revolves. I must, therefore, reject the rather tenuous argument that the purchase, use and maintenance of road-building machinery integrally allied to the construction and maintenance of arterial highways can, in any way, stand on a different footing.

40. Before parting with this judgment, it is necessary to notice an argument which was firmly pressed on behalf of the State before us by Mr Sethi, learned Additional Advocate General, Punjab. He contended that persons who were granted constitutional protection under Articles 310 and 311 of the Constitution of India would squarely be outside the ambit of an industry even though they may fall within the definition of 'workmen'. Particular reliance for this contention was placed on the following observations of Chief Justice Beg and Krishna Iyer, J., in paragraphs 18 and 73, respectively, of the report in *Bangalore Water Supply and Sewerage Board* v. *Rajappa and others* (supra) :—

> "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.
>
> * * * * *

Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces, and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947."

Further:

"That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry."

41. There is no gainsaying the fact that the issue does arise as some of the respondents undoubtedly are Government employees to whom Article 311 of the Constitution of India is applicable. However, having already taken a view in favour of the petitioner-State on the main issue, it seems wholly unnecessary to delve and examine an ancillary question which is not free from difficulty. I would, therefore, refrain from expressing any opinion thereon.

42. In the light of the findings arrived at it must be held in Civil Writ Petition No. 2826 of 1981 that the Labour Court had no jurisdiction to entertain the reference because the respondent-department was not an industry under Section 2 (j) of the Industrial Disputes Act. The findings of the Labour Court on issue Nos. 1 and 2 have, therefore, to be reversed and, consequently, the impugned award, annexure P/5, is hereby quashed. The writ petition is allowed but, in view of the very difficult questions of law being involved, the parties are left to bear their own costs.

43. Civil Writ Petition No. 1227 of 1981, which has been preferred by the respondent-workmen against the same award claiming the additional relief of back wages must also fail for identical reasons and is hereby dismissed without any order as to costs.

44. For the identical reasons aforesaid, it must be held in Civil Writ Petition No. 4423 of 1980 that the Labour Court lacked jurisdiction and its award has, consequently, to be set aside. The parties are left to bear their own costs.

45. In Letters Patent Appeal No. 535 of 1980, again the issue was identical. The workman in the said case was admittedly an employee of the Construction Division of the Public Works Department (Buildings and Roads Branch). In the writ petition, the point was squarely raised that the Public Works Department (Buildings and Roads) did not carry out any trade or business and in fact carried on a sovereign activity of the government and was, therefore, not an 'industry' within the meaning of the Act. The learned Single Judge took the view that the *Bangalore Water Supply Board's case* (supra), covered this issue as well. With great respect, for the detailed reasons, recorded above, that view is unsustainable. The appeal has, therefore, to be allowed and the Award of the Labour Court, dated September 26, 1973, is hereby set aside. In view of the great intricacies of the issues involved, the parties are left to bear their own costs.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

N. K. S.

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