AGRICULTURAL PRODUCE MARKET COMMITTEE A

v.

SHRI ASHOK HARIKUNI AND ANR. ETC.

SEPTEMBER 22, 2000

[A.P. MISRA AND Y.K. SABHARWAL, JJ.] B

Industrial Disputes Act, 1947—S.2(j)

"Industry"—Determination of—Agricultural Produce Marketing Committee—Statutory Corporation engaged in regulating marketing and trading of agricultural produce—None of the functions were "sovereign" or inalienable—Most of the functions capable of being performed by private persons or bodies—Held, falls within the ambit of "industry"—Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. C

"Sovereign functions" of State—What are—Held, exclusively inalienable, not amenable to jurisdiction of ordinarily Civil Court and not capable of being undertaken by any private person or body. D

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966—S.59(3)—Applicability of I.D. Act under—Exclusion of—Held, is limited to the extent specified—Thus, by necessary implication applicable to other fields—Industrial Disputes Act, 1947. E

Interpretation of Statutes

"Industry"—Ascertainment of—Doctrine of Pith and Substance—Applicability of. F

Words & Phrases

"Industry"; "Sovereign function"—Meaning of in the context of S.2(j) of Industrial Disputes Act, 1947.

G

"Appropriate Government"—Meaning of in the context of S.2(a) of Industrial Disputes Act, 1947.

The issue involved in the present appeal was whether the appellant-Agricultural Produce Market Committee established under the Karnataka H

A **Agricultural Produce Marketing (Regulation) Act, 1966 (State Act) was an "industry" under the Industrial Disputes Act, 1947, (Central Act). Respondents, temporary employees working with appellant-Marketing Committee were terminated from service. Labour Court set aside the termination order and directed reinstatement of respondents. Aggrieved,**
B **appellant-Marketing Committee filed a writ petition before the High Court contending that it was not an "industry" within the meaning of the Central Act and thus Labour Court had no jurisdiction to try the cases of its employees. Rejecting the said contention the writ petition as well as the writ appeal were dismissed by High Court. Hence the present appeal.**

C **On behalf of the appellant it was contended that the nature of functions of the marketing committee were "sovereign" functions of the State and thus, it could not be considered to be an "industry" under the Central Act; the power of appointment of various employees under the State Act was only with the State Government and once a person was appointed under the State Act his services would not be governed by the Central Act; that the functions**
D **of the Market Committee was to safeguard the interest of the agriculturalist and not for making any profit.**

HELD : 1. Appellant-Agricultural Produce Market Committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 is an "industry" within the meaning of S.2(j) of the
E **Industrial Disputes Act, 1947. Thus, both the Labour Court and High Court were justified in holding the respondent-employees were "Workmen" under the Central Act. [402-A-B]**

2.1. Every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively
F **inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign"**
G **in nature would not mean every other functions under the same statute to be also sovereign. The Court should examine the statute to severe one from the other by comprehensively examining various provisions of that statute. Thus, in interpreting any statute to find if it is "industry" or not the court has to find its pith and substance. [395-C, D, E]**

H *Bangalore Water-Supply & Sewerage Board etc.* **v.** *R. Rajappa and*

Ors., [1978] 3 SCR 207 and *Chief Conservator of Forests and Anr.* v. *Jagannath Maruti Kondhare and Ors.*, [1996] 2 SCC 293, relied on. A

N. Nagendra Rao and Co. v. *State of A.P.*, [1994] 6 SCC 205 and *Des Raj and Ors.* v. *State of Punjab and Ors.*, [1988] 2 SCC 537, referred to.

2.2. Merely an enterprise being statutory corporation, creature under a statute, would not take it outside the ambit of "industry' as defined under the Central Act. It is true that various functionaries under the State Act are creature of statute. But creation as such, by itself, cannot confer it the status of performing inalienable function of the State. In fact, all Governmental functions cannot be construed either primary or inalienable sovereign functions. Hence, even if some of the functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature or take the Act out of the purview of the Central Act. The dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. Absence of profit making or mere quid pro qua would also not make an enterprise to be outside the ambit of "industry". [399-F-D-E; 401-C-D] B C D

The Corporation of the city of Nagpur v. *Its Employees*, [1960] 2 SCR 942; *D.N. Banerji* v. *P.R. Mukherjee & Ors.*, [1953] SCR 302 and *State of Bombay & Ors.* v. *The Hospital Mazdoor Sabha & Ors.*, [1960] 2 SCR 866, relied on. E

2.3. In the instant case, appellant is an undertaking performing its duties in a systematic and organised manner, regulating the marketing and trading of agricultural produce, rendering services to the community etc. On scanning the whole State Act and perusing the preamble and Statement of Objects and Reasons of the Act, it reveals that the said Act deals with various facets of regulating activities within the market area with respect to the trading in agricultural produce. It includes establishment of various committees including charging of fees for service rendered to the traders of agricultural produce. Any enactment, scheme or project which sponsors and helps in the trading activity is one of the State's essential functions towards welfare activities for the benefit of its subject. Such activities can be undertaken even by any non-governmental organisation or a private person, corporate or company. Thus, none of the functions of the appellant-market F G H

A committee could be construed to be "sovereign" in nature or inalienable in character. [398-B, H; 399-A-C]

3. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. It is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit. Section 2(a) of the Central Act defines 'Appropriate Government' in relation to any industrial disputes concerning any industry carried on by or under the authority of Central Government, or railway company etc. and refers to large number of corporations and corporate bodies which falls in the category of "industry. This indicates even Legislature intends a very large arms of "industry", to include large number of enterprises to be industry to confer benefit to the employees working under it. In fact, several corporations conferred with statutory powers also curtails individual rights but still they were "industries". Thus, it cannot be accepted that curtailment of right of an individual could only be by the exercise of sovereign power. [395-E-F; 400-B-D]

Encyclopedia of the American Constitution; Words and Phrases, Permanent Edition, Volume 39A, referred to.

4. S.59(3) of the State Act indicates that exclusion of the Central Act is limited to the sphere as specified under the sub-section, namely, payment of compensation to the officers or servants of the transferred employees. Thus, by necessary implication, other field under the Central Act is made applicable. Thus, it cannot be accepted that in view of S.59(3) of the State Act, the application of Central Act is fully excluded to the employees of State Act. [401-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5235-5241 of 2000.

From the Judgment and Order dated 10.8.98 of the Karnataka High Court in W.A. Nos. 1078-83 of 1998.

G.V. Chandrasekhar and P.P. Singh for the Appellant.

S.R. Bhat and Ms. K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by A

MISRA, J. Leave granted.

The question raised in this appeal is drawing attention of this Court since very inception when Industrial Disputes Act, 1947 was enacted and even after the passage of more than 50 years, issue remains in the fertile field B of it yielding fresh crops time and again because of wide vaporous definition of the word "industry" under the said Act. We shall be referring about some of these cases in the later part of our judgment. This wide definition has given an opportunity to both employer and employee for raising issues, one trying to pull out of this definition, to be out of the clutches of the said Act, other C bringing within it, to receive benefit under it. Because of width of the periphery of the word "industry" there is tug of war repeatedly between the two, in spite of various decisions of this Court. This situation has led this Court, in *Bangalore Water-Supply & Sewerage Board, Etc.* v. *R. Rajappa & Others,* [1978] 3 SCR 207 to record with anxiety and suggesting Legislature for bringing a comprehensive Bill to clear the fog. It records : D

> "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 E 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."

This led the Legislature to amend the definition of the word "industry" F in Section 2(j) of the aforesaid Act, through amending Act in 1982 but left the said amendment to be given effect from the date to be notified by the Government. Since thereafter with the passage of 18 years in spite of observations of this Court in some cases during this inter magnum, the said amendment has not seen the light of the day leaving the situation in doldrum G for the Courts to continue to give its shape. Inter-linked with it is also the word "sovereign" which is equally fluid as the word "industry". The word "sovereign" changes its complexion with the type of sovereignty a country is structured also with the change of political structure in view of changing socio-cultural heritage of any country. So defining what is sovereign, the Courts not only of this country but other countries as well have been battling H

A to comprehend it since 19th century. This has gained importance in the industrial law as what constitute to be a sovereign function excludes within its ambit "industry" hence industrial law would have no application over it.

The question raised in this Appeal is : a) Whether the appellant, an Agricultural Produce Market Committee (hereinafter referred to as "the Market
B Committee"), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as "the State Act") is an "industry" as contemplated under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Central Act") ? If yes, Will not employee under the State Act would be governed by the Central Act?

C

(b) Will not the State Act over-ride the Central Act for the reason, the State Act received the assent of the President of India, hence the Central Act would be inapplicable to the employees governed by the State Act?

To properly appreciate the controversy, it is necessary to give short
D essential matrix of facts. The appellant is an Agricultural Produce Market Committee established under the State Act. It regulates the marketing of agricultural produce for the benefit of the agriculturist. This market committee is not intended to make any profit and the whole object is only to regulate the agricultural produce both for protecting the interest of agriculturist and
E interest of public at large. The submission for the appellant is, this committee is not an "industry" as contemplated under the Central Act. It exercises sovereign function under the Act. It is a body corporate which has perpetual succession and a common seal. The committee has no power either to appoint or regularise the services of its employees which vests with the State Government. Its employees are civil servants and provisions of the Karnataka
F Civil Service (Conduct Rules), 1966 and the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 are applicable. This committee is established under Section 9 of the Act and is subject to the restrictions imposed under it and is competent to contract, to acquire, hold, lease, sell or otherwise transfer any property and do all other things necessary for the
G purpose for which it is established. Section 58 confers power to appoint Secretary and technical staff to the market committee. It stipulates, every such committee shall have a Government servant as the Secretary and also an Additional Secretary or Assistant Secretary who will also be a Government servant. Under sub-section (1) of Section 59 the officers and servants of market committee holding the classes of posts specified in sub-sections (1),
H (2) and (3) of Section 58, on the date immediately prior to the date of

commencement of that Act, shall, with effect from the date of such commencement become officers and servants of the State Government. Sub-section (1-A) provides, notwithstanding anything contained in this Act or in any other law for the time being in force, officers and servants of the market committee holding such classes of posts on such dates as may be specified by the State Government become officers and servants of the State Government with effect from the date so notified. Sub-section (2) confers right on the officers and servants of the market committee after becoming servants of the State Government under sub- section (1) or sub-section (1-A) to have the same tenure, the same remuneration, same terms and conditions of service, with the same rights and privileges as to pension, gratuity, provident fund etc. as they would have received the same under the market committee concerned and shall continue to receive so until their remuneration, terms and conditions of service including the privileges are altered by rules or other provisions made under Article 309 of the Constitution. Sub-section (3) starts with non obstante clause, notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force or in any contract, in case of transfer of any officer or servant of a market committee by virtue of sub-section (1) and (1-A) shall not entitle any such officer or such servant to any compensation or payment under that Act or other law or contract. Learned counsel for the appellant strongly relies on this sub-section to interpret that the Central Act is excluded from the purview of employees under the State Act.

Section 59 of the State Act is reproduced below:

"*Absorption of staff of market committees in Government service*—(1) Officers and servants of market committees (by whatever name called) holding the classes of posts specified in sub- sections (1), (2) and (3) of Section 58 on the date immediately prior to the date of commencement of that Act, shall, with effect from the date of such commencement become officers and servants of the State Government.

Explanation - The State Government shall determine the designations of the officers and servants of the market committees who shall become officers and servants of the State Government under this sub-section.

[(1-A) Notwithstanding anything contained in this Act or in any other law for the time being in force, officers and servants of market committees holding such classes of posts on such dates as may be

A specified by the State Government shall, with effect from such date become officers and servants of the State Government and they shall draw their salary and allowances from the Consolidated Fund of the State.

(2) The officers and servants of market committees who become officers
B and servants of the State Government under sub-section (1) [or sub-section (1-A)] shall hold their office by the same tenure, at the same remuneration and upon the same terms and conditions of service and with the same rights and privileges as to pension, gratuity, provident fund and such matters as they would have held the same under the
C market committee concerned and shall continue to do so until their remuneration, terms and conditions of service including the privileges as to pension, provident fund and gratuity are altered by rules or other provisions made [under the Karnataka State Civil Services Act, 1978], and any such alteration shall have effect, notwithstanding anything contained in any contract or law for the time being in force.

D (3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force or in any contract the transfer of the services of any officer or servant of a market committee by virtue of sub-section (1) [or sub-section (1-A)] shall not entitle any such officer or servant to
E any compensation or payment under that Act or other law or contract, and no such claim shall be entertained by any Court, tribunal or other authority."

Section 61 refers to the appointment of other staff, other than those who falls under Section 58. Section 62 refers to the Karnataka State Marketing
F Service. The State Government is empowered to constitute any class of officers or servants to bring it into marketing service to be designated as the Karnataka State Marketing Service through issue of notification. Under its proviso, the State Government could carve out and constitute the officers and servants falling under sub-section (1-A) of Section 59 into a separate service
G for the State to be designated as Karnataka State Market Committee Services. Under sub-section (2) the State Government could amalgamate both the Karnataka State Marketing Service and the Karnataka State Market Committee Services into one single service.

The submission for the appellant is that market committee is not conferred
H with the power of appointment, though under Section 61(3) it could create

temporary posts and appoint temporary employees for not more than 180 days with the prior approval of the Director of Agricultural Marketing. Learned counsel for the appellant, Mr. Chandrasekhar has taken us to the various provisions of the Act, namely, Sections 9 (3), 58,59,63,65,66,67,69,72,73 and 83 of the State Act to show that the scheme of the Act is to provide for the better regulation of marketing of agricultural produce and establishment and control of market for agricultural produce within the State. He emphasised, these provisions indicate that the function of the market committee is sovereign in nature hence it could not constitute to be an industry to make its employees as workmen under the Central Act. Section 9(3) confers status on every market committee to be a local authority. Section 61 deals with appointments from among the officers and servants of the Karnataka State Market Committee Service or Karnataka State Market Service other officers, servants of a market committee. Section 63 deals with the powers and duties of the market committee. Section 65 authorises the market committee to levy market fees. Section 66 empowers any officers or servant of the State Government to require any person carrying on business of agricultural produce to produce before him the accounts, other documents, furnish any information relating to the stock of such agricultural produce, or purchases, sales, deliveries of such produce and is also empowered to seize the accounts, register or documents. Section 67 authorises such authorities to stop any vehicle, vessel or other conveyance which is shown to be taking out of the market committee or moving in the market area for examining the contents in the vehicle, vessel or other conveyance. Section 69 confers power to acquire the land and hold it. Section 71 confers right on the market committee to issue licence for the regulation of trading under Section 72 and Section 73 confers right of such authority to cancel or suspend such licence. Section 83 deals with the production of account books etc. The question raised is that these functions are sovereign in nature.

Seven persons serving under the market committee raised dispute, following termination of their services before the Labour Court. First is Shri A.G. Harakuni, who was appointed as an Assistant Engineer on 3rd March, 1987 on daily wage for looking after the construction work and he worked as such till 16th May, 1989 when his services were terminated. Next is Shri G. Nagaraj, who was appointed on 27th April, 1978 as a market fee collector on temporary basis and his services were terminated on 31st March, 1982. Third is Shri Shivakumar, who was appointed as maistry on 25th November, 1981 on daily wages though he was paid salary once in a month and his services were terminated on 31st October, 1986. Next is Shri Nirvanappa. He was

A appointed as a peon on 18th March, 1964 whose appointment was approved on 26th March, 1969. His service was terminated on 3rd August, 1971. Next is Umesh Hegde. He was appointed as work inspector on daily wages vide appointment order dated 28th December, 1984 and his service was terminated on 3rd April, 1987. Next is Siddappa Rudrappa Chickamani who was appointed as watchman on 8th April, 1982 and his service was terminated on 13th B September, 1989 and finally Shri M.M. Satyannavar. He was appointed as an Assistant Engineer on 25th May, 1984 on daily wage basis for looking after development work and his service was terminated on 15th May, 1989. Each of these seven persons are respondents in this case. The Labour Court allowed their applications by setting aside their order of termination and C directed their reinstatement. The appellant aggrieved filed writ petition challenging these orders, among other grounds, one is challenge to the jurisdiction of the Labour Courts to try the cases of these seven respondents as the appellant is not an "industry" within the meaning of the Central Act, hence the Labour Courts have no jurisdiction to try their claims. Learned single Judge of the High Court dismissed the writ petition, holding that the D appellant-market committee is an "industry" and hence Labour Courts, have the jurisdiction to decide their cases. Feeling aggrieved the appellants preferred writ appeal and the Division Bench similarly dismissed the same upholding that appellant-committee is an "industry" within the meaning of the Central Act.

E

Learned counsel for the appellant challenges these concurrent findings by submitting that functions of the appellant committee being sovereign in nature and inalienable in character cannot be construed an "industry". The power of appointment of the various employees under the Act is only with the State Government, only limited power vests on the appellate-committee, F to appoint person temporarily for a period not exceeding 180 days. Under Section 61(3) such person cannot get any lien over any post. He has no right to seek regularisation. Once a person is appointed under the State Act his services would not be governed by the Central Act. The claimants being appointed under the State Act which received assent of the President of India G on 19th August, 1966 it will prevail over the Central Act. The functions of market committee are for the regulation of trade in notified agricultural produces in order to safeguard the interest of the agriculturist and public at large. This was to ensure legitimate price of the agricultural produce to be sold in the market area. This committee is not constituted for making any profit but only to serve the cause of the agriculturist so that they may receive fair price of H their produce. The submission is, persons appointed to work under this

market committee are government servants, and they are appointed in accordance with the cadre and their wages are paid out of the consolidated fund. The temporary employees appointed by the market committee are paid salaries out of the fund known as market fund. Hence there is no relationship of employer and employee of those serving under it. It may be stated here, in the present case the subject matter relates only of those employees who were temporarily appointed and have yet not become government servant. Another submission is that the High Court erred in not bringing the market committee within the exception clause referred in the decision of *Bangalore Water-Supply* case (supra).

On the other hand, learned counsel Shri Ravindra Bhat appearing on behalf of the respondents, submits that in view of the decisions of this Court, especially with reference to *Bangalore Water-Supply* case (supra), the market committee is an "industry" within the meaning of the Central Act. The submission is, only strictly "sovereign functions" as held in Bangalore Water-Supply case (supra) which is explained in *Chief Conservator of Forests & Anr.* v. *Jagannath Maruti Kondhare & Ors.,* [1996] 2 SCC 293, could be exempted from the provisions of the Central Act. Hence, neither all governmental functions could be construed to be sovereign nor all statutory services could either be termed as sovereign or to exclude it from the purview of the Central Act.

The main thrust of submission for either side is, one trying to bring the functions of the appellant-committee within sovereign functions and the other stretching it out of it. The submission for the appellant is the power of the government and functions of the committee, namely, notifying the intention of the government to regulate the marketing of specified agricultural produce within specified area under Section 3, declaration of market area under Section 4, establishment of market under Section 7, payment of Secretary and technical staff under Section 58, absorption of staff of market committee in government services under Section 59, appointment of other staff under Section 61, levy of market fees under Section 65, grant of license under Section 72, de-notification of market area under Section 143, and amalgamation of market committees under Section 144 are all sovereign in nature and hence it could not be construed to be an industry. On the other hand, learned counsel for the respondent submits sovereign functions are restricted to legislative, maintenance of law and order, administration of law and legal system. Hence, other functions, to which the appellant case falls, cannot be construed to be a sovereign function.

A We now proceed to consider as to what would be the test to find an enterprise to be an "industry". As we have said, the matter has been under consideration by various courts in various parts of this country, including this Court. Some of which we are proceeding to refer hereunder. In *The Corporation of the City of Nagpur* v. *Its Employees,* [1960] 2 SCR 942, the question raised was, whether and to what extent the municipal activities of the Corporation of Nagpur City fell within the term "industry" as defined by Section 2 (14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Applying the decision of this Court in *D.N. Banerji* v. *P.R. Mukherjee & Ors.,* [1953] SCR 302, this Court held:

> "It is not necessary that an activity of the Corporation must share the common characteristics of an industry before it can come within the section. The words of s. 2(14) of the Act are clear and unambiguous and the maxim *noscitur a sociis* can have no application. The history of industrial disputes and the legislation, however, recognises the basic concept that the activity must be an organised one and not one that pertains to private or personal employment."

With reference to *State of Bombay & Ors.* v. *The Hospital Mazdoor Sabha & Ors.,* [1960] 2 SCR 866, this Court held:

> "But the definition, however, wide, cannot include the regal primary and inalienable functions of the State, though statutory delegated to a Corporation and the ambit of such functions cannot be extended so as to include the activities of a modern State and must be confined to legislative power, administration of law and judicial power."

This case further records:

> "Before considering the positive aspects of the definition, what is not an industry may be considered. However, wide the definition of "industry" may be, it cannot include the regal or sovereign functions of State. This is the agreed basis of the arguments at the Bar, though the learned counsel differed on the ambit of such functions. While the learned counsel for the Corporation would like to enlarge the scope of these functions so as to comprehend all the welfare activities of a modern State, the learned counsel for the respondents would seek to confine them to what are aptly termed "the primary and inalienable functions of a constitutional government ....Lord Watson, in *Coomber* v. *Justices of Berks*, describes the functions such as administration of

justice, maintenance of order and repression of crime, as among the primary and inalienable functions of a constitutional Government. Isaacs, J. in his dissenting judgment in *The Federated State School Teachers' Association of Australia* v. *The State of Victoria,* concisely states thus at p. 585: A

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

Supreme Court of America in *Verisimo Vasquez Vilas* v. *City of Manila* expounded the dual character of a municipal corporation thus:

"They exercise powers which are governmental and powers which are of a private or business character. In the one character a municipal corporation is a governmental sub-division, and for that purpose exercises by delegation a part of the sovereignty of the State. In the other character it is a mere legal entity or juristic person. In the latter character it stands for the community in the administration of local affairs wholly beyond the sphere of the public purposes for which its governmental powers are conferred. D E

Isaacs and Rich, JJ., in *The Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation* in the context of the dual functions of State say much to the same effect at p. 530:

F

"Here we have the discrimen of Crown exemption. If a municipality either (1) is legally empowered to perform and does perform any function whatever for the Crown, or (2) is lawfully empowered to perform and does perform any function which constitutionally is inalienable a Crown function - as, for instance, the administration of justice - the municipality is in law presumed to represent the Crown, and the exemption applies. Otherwise, it is outside that exemption, and, if impliedly exempted at all, some other principle must be resorted to. The making and maintenance of streets in the municipality is not within either proposition." G

A corporation may, therefore, discharge a dual function: it may be H

A statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of "industry".

Finally the definition of "industry" is summarised:

B

"The result of the discussion may be summarised thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning C of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily D excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, E whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act."

F

Within this premises this Court considered various departments of the corporation as to whether employees of such department would be covered by the Central Act. This Court holds various departments of the corporation including tax department, assessment department, marketing department to be an "industry".

G

This Court in *Bangalore Water-Supply & Sewerage Board etc.* v. *R. Rajappa & Ors.*, [1978] 3 SCR 207 (Constitution Bench), considered the definition of "industry" as defined under Section 2(j) of the Central Act. This Court held:

H "Although we are not concerned in this case with those categories

A

of employees who particularly come under departments charged with the responsibility for essential constitutional functions of government, it is appropriate to state that if there are industrial units severable from the essential functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries. A blanket exclusion of every one of the host of employees engaged by government in departments falling under general rubrics like, justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act. We say no more except to observe that closer exploration, not summary rejection, is necessary."

B

C

This decision also records *Corporation of Nagpur City* case (supra) as to how in that case various departments of the corporation were held to be an "industry". This Court considered the submission, as in the present case that functions of the various departments are only out of statutory sanction and no private individual can discharge those statutory functions. *Corporation of Nagpur City* case (supra) considered this aspect and records to the following effect:

D

> "It is said that the functions of this department are statutory and no private individual can discharge those statutory functions. The question is not whether the discharge of certain functions by Corporation have statutory backing, but whether those functions can equally be performed by private individuals."

E

Strong reliance is placed by learned counsel for the appellant to the following observations of this Court in *Bangalore Water-Supply* case (supra) which is an exception which excludes it from the operation of the Central Act:

F

> "In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with the employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947."

G

The submission is, this observation excludes implicitly services under the statutory bodies from the operation of the Industrial Disputes Act. This submission is misconceived. This observation merely records what Parliament can make law in relation to the employees of statutory bodies etc. In other

H

A words, if it so desires may exclude the employees of any statutory bodies expressly or by necessary implication from the purview of Industrial Disputes Act. This decision does not carve out any exception to exclude employees of all the statutory bodies. It merely indicates power of the Parliament, to place any class of employees outside the purview of the Central Act. The question is, whether there is any such provision under the State Act or the B Central Act, which excludes these employees from the operation of the Central Act. In fact, Section 2(a) of the Central Act itself reveals large number of statutory corporations falling within the rubric of "industry".

In relation to what are "sovereign" and what are "non-sovereign" C functions, this Court in *Chief Conservator of Forests and Anr.* v. *Jagannath Maruti Kondhare and Ors.*, [1996] 2 SCC 293, holds:

> "We may not go by the lebels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of *Nagendra Rao* D case. As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power E to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only F the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even martial. Because of this the demarcating line between sovereign and non-sovereign powers has largely G disappeared.
>
> The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in *Bangalore Water Supply* case would get eroded, and substantially. We would demur to do so on the H face of what was stated in the aforesaid case according to which

except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable." A

In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2 (a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature would not mean every other functions under the same statute to be also sovereign. The court should examine the statute to severe one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is "industry' or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the frame work of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit. B C D E F G

In *N. Nagendra Rao & Co.* v. *State of A.P.*, [1994] 6 SCC 205, the question raised was about the liability of the State to pay compensation for the negligence or misfeasance on the part of its officers in discharge of their public duties under a statute, which are incidental or ancillary and not primary or inalienable function of the State. This decision holds that the State is H

A immuned only in cases where its officers perform primary or inalienable functions such as defence of the country, administration of justice, maintenance of law and order. This Court held:

> "A search or seizure effected under such law could be taken to be an exercise of power which may be in domain of inalienable function. Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions is a different matter. But when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then it being an exercise of such State function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously.
>
> In the modern sense the distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of power and manner of its exercise.....One of the tests to determine if the legislative or executive function is sovereign in nature is whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court."

With reference to irrigation department of the State of Punjab this Court considered the question whether it is an "industry" within the meaning of Section 2(j) of the Central Act. The function of this department is for the development of agriculture. It undertakes harness of the surface and ground water resources of the State, the equitable distribution. It involves construction of major, medium and minor irrigation projects, maintenance of network of channels, regulation of canal supplies, enforcement of water laws etc. It is also responsible to provide protection to the valuable irrigated lands and public property from flooding, river action and waterlogging. This requires construction of flood protection, river training, drainage and anti- waterlogging works and their maintenance. Its functions includes plan for irrigation development in the State. Each of these functions overall are inherently of the State. With reference to this irrigation department in *Des Raj and Ors.* v. *State of Punjab & Ors.*, [1988] 2 SCC 537 this Court held:

> "With regard to the activities of the irrigation department and as

also the tests laid down in various decisions of this Court particularly applying the Dominant Nature test in *Bangalore Water Supply and Sewerage Board* case (Supra), it was held to be an "industry"." A

In this background we may proceed to examine the present State Act. The preamble of this Act records:

"An Act to provide for the better regulation of marketing and agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karnataka". B

We may also usefully produce the Statement of Objects and Reasons of the State Act : C

"STATEMENT OF OBJECTS AND REASONS:

Among other things, provision is made in this Bill for -

(i) defining 'agricultural produce' to include all produce of agriculture, animal husbandry, apiculture, horticulture, forest produce and any other produce, live-stock and poultry; D

(ii) notifying the intention of Government to regulate the purchase and sale of agricultural produce in specified area and declaration of market area and of market yard;

(iii) Establishment of market committees for trading in specified kinds of agricultural produce and also separate market committees within the same market area for trading in any particular kind of agricultural produce; E

(iv) representation on the market committee to purchasers of agricultural produce, representatives of the purchasers' co-operative societies, representatives of co-operative marketing and processing societies, municipalities, taluk boards and the Central Warehousing Corporation or State Warehousing Corporation; F

(v) levy and collection of market fees by the market committee; G

(vi) constitution of market committee funds and Central Market Fund;

(vii) conferring borrowing powers on market committee;

(viii) appointment of Government servants as Secretaries, Assistant Secretaries, Technical Accounts and Audit Staff of market H

committees to ensure efficient administration and control of markets;

(ix) inquiry or inspection by the Chief Marketing Officer;

(x) supersession of market committee for failure to perform duties."

The aforesaid preamble and Statement of Objects and Reasons clearly disclose the sphere of this Act to be for the regulation of marketing of agricultural produce, establishment of market committee for controlling, trading in specified kind of agricultural produce. It provides for levying of market fees by the market committee. It confers power on the market committee to borrow money. The appointment of Government servants as Secretaries, Assistant Secretaries, Technical Accounts and Audit Staff is to ensure efficient administration and control of markets. In order to strengthen the said objectives Chapter II deals with the establishment of markets, Chapter III with constitution of market committees including provisions for election of its members. The constitution of the committee under Section 11 consists of 11 members out of which one has to be a woman, two persons belonging to Scheduled Castes and Scheduled Tribes elected by the agriculturists in the market area, one member to be person other than retail traders, one member to be a representative of co-operative marketing society carrying on business in notified agricultural produce, one member to be representative of agricultural cooperative processing society, one to be an officer not below the rank of Secretary of the concerned market committee nominated by the Director of Agricultural Marketing who has no right to vote and three members to be nominated by the State Government who have right to vote. Chapter IV deals with conduct of business of the market committee, Chapter V refers to staff of the market committee, Chapter VI deals with the powers and duties of market committee. It indicates it is for regulating the trading of agriculture produce within the market area, Chapter VII directly deals with regulation of trading which includes grant of licences, power to cancel and suspend it, Chapter VIII pertains to market fund, Chapter IX refers to special commodities market, Chapter X deals with Mandal Panchayats as agents of market committee, Chapter XI deals with establishment of independent markets and market committees for special commodities. Chapter XII is about penalties, Chapter XIII controls the functioning of the various officers and members including that of market committee and Chapter XIV is miscellaneous which includes provisions for recovering of sums due to the market committee or board etc. After scanning the whole Act and perusing the preamble and Statement of Objects and Reasons of the Act, it reveals that this Act deals with various facets of

regulating activities within the market area with respect to the trading in agricultural produce. It includes establishment of various committees including charging of fees for service rendered to the traders of agricultural producers. Any enactment, scheme or project which sponsors helps in the trading activity is one of the State's essential functions towards welfare activities for the benefit of its subject. Such activities can be undertaken even by any non-governmental organisation or a private person, corporate or company. In fact, prior to the abolition of Zamindari, the Hats and Bazars (Markets) held on Zamindar's (Landowner) land, the Zamindar used to charge fees for rendering service for holding such market, by providing land and facilities to the participants of such market. By this it helped producers, sellers and public at large through such trading. This is similar, in a nature and form to what is being done now under the State Act through statutory functionaries. Thus none of these functions could be construed to be sovereign in nature or inalienable in character.

It is true various functionaries under this Act are creature of statute. But creation as such, by itself, cannot confer it the status of performing inalienable functions of the State. The main controlling functions and power is conferred on the market committee whose constitution itself reveals, except one or two rests are all elected members representing some on other class from the public. In fact, all governmental functions cannot be construed either primary or inalienable sovereign function. Hence even if some of the functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature or take the aforesaid Act out of the purview of the Central Act.

Thus merely an enterprise being statutory corporation, creature under a statute, would not take it outside the ambit of "industry" as defined under the Central Act. We do not find the present case falling under any exception laid down in the *Bangalore Sewerage Board* case (Supra). The mere fact that some employees of the appellant are government servants would make no difference as the true test to find -has to be gathered from the dominant object for which functionaries are working. It cannot be doubted that the appellant is an undertaking performing its duties in a systematic and organised manner, regulating the marketing and trading of agricultural produce, rendering services to the community. In the present case, as we have recorded earlier, we are concerned only with those employees who are not government servants. Testing the dominant object as laid down in *Bangalore Sewerage Board* case

A (Supra), we reach to inescapable conclusion that none of the activities of the Agriculture Produce Market Committee could be construed to be sovereign in nature. Hence we have no hesitation to hold that this corporation falls within the definition of "industry" under Section 2(j) of the Central Act.

Section 2(a) of the Central Act defines 'Appropriate Government' in
B relation to any industrial disputes concerning any industry carried on by or under the authority of Central Government, or railway company etc. and refers to large number of corporations and corporate bodies which falls in the category of "industry". This indicates even Legislature intends a very large arms of "industry", to include large number of enterprises to be industry to
C confer benefit to the employees working under it. In fact, several corporations conferred with statutory powers also curtails individual rights like, through levy of demurrages, detention charges in the warehousing corporation under the Warehouse Corporation Act; Regulation of entry into airport, ATC, levy and regulation of taxes and fees by the international airport authority. Assessment and levy of damages as well as penalties by authorities under
D the Employees State Insurance Act and Employees Provident Fund Act. Though each of the aforesaid corporations and statutory bodies are "industry". So one of the feeble submission that curtailment of right of an individual could only be by the exercise of sovereign power has also no merit.

From the aforesaid catena of authorities, inalienability is one of the
E basic character of sovereignty. The Encyclopaedia of the American Constitution with reference to "sovereignty" attempts to define sovereignty. It records:

> "Within the American regime the ultimate power and authority to
> F alter or a abolish the constitutions of government of state and Union resides only and inalienably with the people. If it be necessary or useful to use the term "sovereignty" in the sense of ultimate political power, then there is no sovereign in America but the people.
>
> DENNIS J. MAHONEY"

G Words and Phrases, Permanent Edition, Volume 39A with reference to "sovereign power" records:

> "The "sovereign powers" of a government include all the powers necessary to accomplish its legitimate ends and purposes. Such powers must exist in all practical governments. They are the incidents of
> H sovereignty, of which a state cannot devest itself. *Boggs* v. *Meree*

Min. Co., 14 Cal. 279, 309.....In all governments of constitutional limitations "sovereign power" manifests itself in but three ways. By exercising the right of taxation; by the right of eminent domain; and through its police power. *United States* v. *Douglas-Willan Sartoris Co.,* 22 p. 92, 96, 3 Wyo. 287." A

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

The last submission for the appellant is with reference to sub-section (3) of Section 59 of the said Act. The submission is, this excludes the application of the Central Act to the employees under the State Act. The reliance is placed on the following opening words of this sub-section (3) namely: E

"Notwithstanding anything contained in the Industrial Disputes Act, 1947." F

On the contrary this indicates that exclusion of the Central Act is limited to the sphere as specified under this sub-section, namely, payment of compensation to the officers or servants of the transferred employees. Thus by necessary implication, other field under the Central Act is made applicable. Hence this submission has no merit. G

In view of the aforesaid settled legal principle the width of "industry" being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant H

A object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of "industry" under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are 'workmen' under the
B Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual cases and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merit
C and are dismissed. Costs on the parties.

S.V.K. Appeals dismissed.