

(2012) 03 CAL CK 0018
In the Calcutta High Court
Case No : F.M.A. 54 of 2010

Garden Reach Shipbuilders and Engineers Ltd.

APPELLANT

Vs

Second Industrial Tribunal and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Airports Authority of India Act, 1994 — Section 3
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 3A
Dock Workers (Regulation of Employment) Act, 1948 — Section 5A, 5B
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5A, 5B
Employees State Insurance Act, 1948 — Section 3
Food Corporations Act, 1964 — Section 16
Industrial Disputes Act, 1947 — Section 2, 2A
Life Insurance Corporation Act, 1956 — Section 3
National Housing Bank Act, 1987 — Section 3
Regional Rural Banks Act, 1976 — Section 3
Warehousing Corporations Act, 1962 — Section 3

Citation : (2012) 133 FLR 1060

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Mr. Dipak Kumar Ghosh and Mr. Ranjay De, for the Appellant;Madhusudan Dutta and Mr. S. Sarkar, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal raises an interesting and important question in relation to the definition of "appropriate Government" under the Industrial Disputes Act, 1947. The principal question which arises in this appeal for consideration is whether Garden Reach Shipbuilders & Engineers Limited (in short GRSE) is an industry carried on by or under the authority of the Central Government within the meaning of 2 (a) (i) of the Industrial Disputes Act, 1947.

2. Section 2A of the Industrial Disputes Act, 1947 reads as follows :-

2(a). appropriate Government" means

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning [a Dock Labour Board established u/s 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees" State Insurance Corporation established u/s 3 of the Employees" State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted u/s 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted u/s 5A and section 5B, respectively, of the Employees" Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established u/s 3 of the Deposit Insurance and Credit Insurance Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established u/s 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established u/s 3, or a Board of Management established for two or more contiguous States u/s 16, of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted u/s 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established u/s 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited] [the National Housing Bank established u/s 3 of the National Housing Bank Act, 1987 (53 of 1987)] or an [{ an air transport service, or a banking or an insurance company,} a mine, an oil field,] [a Cantonment Board,] or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;

3. The facts leading to this appeal are briefly narrated hereinafter :-

4. In view of dismissal of respondent No. 3 Shri Pradip Kr. Ganguly from service of the appellant Company, a dispute was raised by the said respondent No. 3. The said dispute was referred to the Second Industrial Tribunal by the State Government by an Order of Reference dated 7th February, 1995. In course of proceeding before the said Tribunal an application was filed on behalf of the Company raising the objection that in respect of the said dispute the appropriate Government would be the Central Government and not the State Government and consequently, the reference was wholly without jurisdiction. By an order dated 25th October, 2000 the Respondent Tribunal was pleased to hold that the "appropriate Government" was Central Government.

5. The aforesaid decision of the Tribunal was challenged by the respondent No. 3 herein before this Court, in a writ proceeding and by the Judgment and Order dated 21st March, 2002 passed in W.P. No. 3777 (W) of 2001 a learned Judge of this Court was pleased to set aside the decision of the learned Tribunal and sent the matter back on remand for determination of the question whether there was any conferment of authority on the Company by Central Government to carry on the industry in question.

6. After remand, the learned Tribunal upon considering the depositions of the witnesses and also considering the submissions of the learned Advocate of the respective parties passed the Order No. 137 dated 10th September, 2004, holding that the "appropriate Government" would be the State Government and not the Central Government.

7. The appellant/petitioner thereafter challenged the aforesaid order of the learned Tribunal before this Court by filing the writ petition being No. 6225 (W) of 2005. The said writ petition was finally disposed of by a learned Judge of this Court by the impugned judgment and order under appeal dated 18th September, 2007 whereby and whereunder the said learned Judge affirmed the order passed by the learned Tribunal on 10th September, 2004. The appellant has thereafter preferred the instant appeal assailing the judgment and order dated 18th September, 2007 passed by the learned Single Judge.

8. From the records, we find that the Central Government became the owner of GRSE by acquisition of shares. The Government of India owns 100% share in GRSE. It is also not in dispute that the Chairman and other Directors of GRSE are appointed by the President of India and their remuneration is also required to be determined by the President.

9. Mr. Saktinath Mukherjee, learned senior counsel of the appellant submitted that the GRSE is under the Administrative Control of the Defence Department, Govt. of India. Mr. Mukherjee submitted that the Defence Department cannot control any industry excepting for its own purpose. Mr. Mukherjee also submitted that GRSE manufactures ships for Indian Navy and other projects and several other items for the Army.

10. The learned counsel of the respondent workmen however, submitted that the appellant Company at no point of time carried on business under the Authority of the Central Government since no document has been disclosed by the appellant Company in order to establish the conferment power by the Central Government. The appropriate Government in relation to an Industrial Dispute was considered by a Constitution Bench of seven Judges" of the Hon"ble Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

11. Upon considering the provisions of Section 2 (a) of the Industrial Disputes Act, Constitution Bench of the Hon"ble Supreme Court held :-

23. An analysis of this provision shows that the Central Government will be the appropriate Government in relation to an industrial dispute concerning :

1. any industry carried on by or under the authority of the Central Government, or by a railway company; or
2. any such controlled industry as may be specified in this behalf by the Central Government; or
3. the enumerated industries (which form part of the definition quoted above and need not be reproduced here)."

12. In the aforesaid decision, Hon"ble Supreme Court also observed :-

30. From the above discussion, it follows that the phrase any industry carried on under the authority of the Central Government implies an industry which is carried on by virtue, of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government Company or other Government Company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government Company or undertaking it would disable such a company/undertaking to carry on the industry in question.

13. Later a three Judge Bench of the Hon"ble Supreme Court has been pleased to deal with an industry in respect of which the Central Government is the "appropriate Government" under the contract Labour (Regulation & Abolition) Act, 1970. 14. In the case of Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero Canteen K. Sangh & Ors., reported in 2003 (1) LLJ 494 aforesaid three Judge Bench of the Hon"ble Supreme Court relying upon the Constitution Bench judgment of the Hon"ble Supreme Court in the case of Steel Authority of India Limited & Ors. (supra) held :-

2. The question that arises for consideration in this case, whether the High Court was justified in holding that the State Government is the "Appropriate Government" under the provisions of the relevant Act. The Constitution Bench recently has considered the relevant provisions of the Contract Labour (Regulation and Abolition) Act in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and has come to the conclusion that the "Appropriate Government" will be the Government which exercises control and authority over the concerned organisation. It is undisputed that the Hindustan Aeronautics Ltd. is an undertaking of the Central Government which exercises full control over the same. Issuance of licence by the State Government is no criteria to come to a conclusion that the State Government would be the "Appropriate Government". The impugned judgment of the High Court therefore is on the face of it, erroneous in view of the Constitution Bench decision of this Court referred to earlier. We, therefore, set aside the impugned judgment of the High Court and hold that the Central Government is the "Appropriate Government.

15. Going through the aforesaid Constitution Bench judgment of the Hon"ble

Supreme Court in the case of Steel Authority of India Limited & Ors. (supra), we are of the opinion that 100% ownership of the Central Government or control over the Company or the undertaking through appointment of Directors are not relevant factors to decide the question of appropriate Government under the Industrial Disputes Act.

16. An industry may be an agency or instrumentality of the Central Government but in order to attract the provisions of Section 2 (a) (i) it must be an "industry carried on by or under the authority of the Central Government."

17. Whether an industry is carried on by or under the authority of the Central Government will depend upon some factors in addition to the ownership and ultimate control as usually found in the case of a Government Company or undertaking.

18. Referring to the Memorandum & Articles of Association of GRSE and also relying upon the Memorandum of Understanding between Garden Reach Shipbuilders & Engineers Ltd. and Secretary, Defence Production & Supplies, Ministry of Defence, Mr. Mukherjee submitted that GRSE is an industry which is being carried on under the Authority of the Central Government.

19. The learned counsel representing the respondent workmen however, submitted that at no point of time the appellant company carried on its business under the authority of the Central Government. The learned counsel of the workmen submitted that the appellant company is an autonomous Public Sector Commercial Company and Ministry of Defence, Govt. of India has certain control over the said company.

21. It is not in dispute that the appellant company carries on its activities and runs the industry on the basis of the Memorandum and Articles of Association. The mission and objectives of the appellant company have also been mentioned in the Memorandum of Understanding between the appellant company and Secretary, Defence Production and Supplies, Ministry of Defence.. Clauses 4 and 9 of the objectives mentioned in Part-I of the Memorandum of Understanding are set out hereunder :-

4. To explore the alternate market in Engineering & Structural/Fabrication Industries to ensure optimum capacity utilisation.

9. Maintain high degree of customers" satisfaction.

22. The word "customers" mentioned in Clause-9 of the objectives does not restrict only Govt. of India. Furthermore, to explore the alternate market in Engineering and Structural/Fabrication Industries appellant company cannot confine its activities and production only in respect of Govt. of India. Furthermore, several other documents have been produced before us wherefrom it appears that the appellant company manufactures well turbine and submersible pump which are best suited for agricultural use as well as other water supply requirements. The appellant company is also manufacturing

conveyors to meet the requirements of individual customers for handling materials at Thermal Power Plants, Steel Plants, Sports, Mines etc. The appellant company is constructing portable steel bridges. From the Brochure of the appellant company, it appears that the said appellant company has designed and built Commercial Vessels providing repair services for commercial, naval and coast guard vessels. The aforesaid information is available from the brochure of the appellant company which has been annexed with the Paper Book.

23. Mr. Saktinath Mukherjee, learned senior counsel specifically submitted before us that the appellant company is manufacturing ships for Indian Navy and doing other various projects for the Army and Navy. We however, find that the appellant company is also engaged in other various activities mentioned in the brochure published by the said appellant company. In any event, the aforesaid facts are not very much relevant for the purpose of deciding the issue relating to the conferment of authority on the company by the Central Government to carry on the industry in question.

24. Mr. Mukherjee referred to a written communication dated 19th July, 2006 issued by the Director, Ministry of Labour & Employment, Govt. of India whereby the General Manager (H.R & A.) of the appellant company has been informed that the Central Government is the "appropriate government" for the establishment of the appellant company. The Director of the Ministry of Labour & Employment, Govt. of India has no authority to declare Central Government as the "appropriate government" in respect of the appellant company under the Industrial Disputes Act, 1947 unless it is established that the appellant company carries on the industry under the authority of the Central Government.

25. From the Memorandum of Understanding, we find that the appellant company will receive assistance from the Central Government for fulfillment of its obligation under the Memorandum of Understanding.

26. The relevant extracts from Part-IV of the Memorandum of Understanding are set out hereunder

"PART - IV

ASSISTANCE FROM THE GOVT.

In fulfillment of its obligations under this MOU, the Govt. (Dept. of Defence Production & Supplies) Shall undertake the following.

26. From the Memorandum of Understanding, it is clear that with the assistance of the Central Government the appellant company runs the industry and fulfills its objectives including customers' satisfaction. Accordingly, it is clear that the appellant company is running the industry upon receiving assistance from the Central Government and not under the authority of the Central Government as has been erroneously claimed on behalf of the appellants.

27. The Central Government will be the "Appropriate Government" in terms of

Section 2 (a) (i) of the Industrial Disputes Act provided the industry in question is carried on by or under the authority of the Central Government. The industry of the appellant company herein namely, GRSE is not carried on directly by the Central Government or by anyone of its departments like Post & Telegraph or the Railways. Therefore, the conferment of authority on the appellant company has to be established in order to hold that the Central Government is the "Appropriate Government" in relation to the appellant company in terms of Section 2 (a) (i) of the Industrial Disputes Act. In the present case, the Central Government has not conferred any authority by a statute on the appellant company to carry on the industry.

28. Accordingly, from the facts it has to be ascertained whether there is any conferment of authority on the appellant company by the Central Government to carry on the industry. The learned Tribunal has decided the aforesaid question of fact upon scrutinizing the relevant documents and evidence on record and arrived at the conclusion that the State Government is the "Appropriate Government" in relation to the industry run by the appellant company. The aforesaid question of fact cannot be adjudicated by this Court in its Constitutional Writ Jurisdiction. Furthermore, the appellant company has not also produced any document in order to establish the conferment of authority on the appellant company by the Central Government.

29. In the case of Steel Authority of India Limited & Ors (supra), Supreme Court has specifically observed :-

39. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to Central Government though they may be state within the meaning of Art. 12 of the Constitution. We have held above that being the instrumentality or agency for the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. Therefore, it will be incorrect to say that in relation to any establishment of a Central Government Company/undertaking, the appropriate Government will be the Central Government. To hold that the Central Government is the appropriate Government in relation to any establishment, the Court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the "appropriate Government" under the CLRA Act and the I.D. Act provided the industry in question is carried on by a Central Government Company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a Statute or by virtue of relationship of principal and agent or delegation of power, where the authority, to carry on any industry for or on behalf of the Central Government is conferred on the Government/any undertaking by the Statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the Government company/any undertaking by the Central

Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case.

30. The learned counsel of the appellant company heavily relied upon the three Judge Bench decision of the Supreme Court in the case of Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero Canteen K. Sangh & Ors. (supra) and submitted that in the facts of the present case, Central Government will be the "Appropriate Government" in relation to the industrial dispute concerning the industry carried on by the appellant company. The principles of law laid down by the Constitution Bench in the case of Steel Authority of India Limited & Ors (supra) have been followed in the subsequent case of Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero Canteen K. Sangh & Ors.(supra). In the aforesaid decision of Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero Canteen K. Sangh & Ors. (supra), Hon"ble Supreme Court upon considering the facts involved in the aforesaid case arrived at the conclusion that the Central Government is the "Appropriate Government" for the purpose of deciding the industrial disputes raised in relation to the said case.

31. However, in an earlier decision in relation to the Hindustan Aeronautics Ltd. Supreme Court upon considering the facts of the case, held that the "Appropriate Government" in relation to the industrial dispute raised in connection with the grievances of the workmen would be State Government and the reference for adjudication of such a dispute by the Govt. of West Bengal was held good and valid. The relevant extracts from the earlier three Judge Bench of the Supreme Court in the case of M/s Hindustan Aeronautics Ltd. Vs. The Workmen & Ors., reported in (1975) 4 SCC 679 are set out hereunder :-

4. The other leg of the argument to challenge the competency of the West Bengal Government to make the reference is also fruitless. It may be assumed that the Barrackpore branch was under the control of the Bangalore division of the company. Yet it was a separate branch engaged in an industry of repairs of aircrafts or the like at Barrackpore. For the purposes of the Act and on the facts of this case the Barrackpore branch was an industry carried on by the company as a separate unit. The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate government concerned in the maintenance of the industrial peace was the West Bengal Government. The grievances of the workmen of Barrackpore were their own and the cause of action in relation to the industrial dispute in question arose there. The reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid. The facts of the case of Tiruvenibai and Another Vs. Lilabai, cited on behalf of the appellant are clearly distinguishable. The ratio of that case was pressed into service in vain on behalf of the appellant.

32. The Constitution Bench judgment of the Hon"ble Supreme Court specifically held in the case of Steel Authority of India Limited & Ors (supra) that the

conferment of authority on the government company by the Central Government to carry on the industry in question is a question of fact and has to be ascertained on the facts and circumstances of each case. The three Judge Bench of the Supreme Court while deciding the case of Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero Canteen K. Sangh & Ors. (supra) upon ascertaining the question of facts and circumstances of the said case held that the Central Government will be the "Appropriate Government" in respect of the industry run by the Hindustan Aeronautics Ltd. whereas on the earlier occasion, another three Judge Bench of the Supreme Court in the case of M/s Hindustan Aeronautics Ltd. Vs. The Workmen & Ors. (supra) arrived at the conclusion that the State Government would be the "Appropriate Government" upon considering the facts and circumstances of the said case.

33. The learned Tribunal upon considering the facts and circumstances of the case and also the evidence on record arrived at the conclusion that the State Government is the "Appropriate Government" in relation to the industry run by the appellant company.

34. The learned Single Judge on consideration of the submissions of the learned counsel of both the parties and scrutinizing the materials on record held that the State Government is the "appropriate Government" in respect of the industry run by the appellant company.

35. We do not find any error and/or infirmity in the aforesaid finding of the learned Tribunal which has been subsequently affirmed by the learned Single Judge.

36. Therefore, we find no scope to interfere with the judgment and order under appeal passed by the learned Single Judge. Accordingly, we affirm the impugned judgment and order passed by the learned Single Judge and dismiss this appeal as we do not find any merit in the same.

37. In the facts of the present case, there will be however no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.