

(1997) 07 BOM CK 0113

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 879 of 1997

National Building Construction Corporation Ltd.

APPELLANT

Vs

Ram Pal Singh and Another

RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 5A, 5B
Employees State Insurance Act, 1948 — Section 3
Industrial Disputes Act, 1947 — Section 2(9)

Citation : (1997) 4 ALLMR 285

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Ms. Shobha Gopal, for the Appellant;

Judgement

R.M. Lodha, J.—The Petitioner National Building Construction Corporation Limited ("employer industry") seek to challenge the order dated 18th March, 1997 passed by the Industrial Court. The fate of this writ petition depends on the answer to the question whether in relation to the employer industry the Central Government is the "appropriate Government" within the meaning of Section 2(a) of the Industrial Disputes Act, 1947 (for short, "I.D. Act") and if yes, the complaint filed by the employee was not maintainable and Industrial Court had no jurisdiction to entertain and try the complaint.

2. The employee filed the complaint against the employer industry for the alleged unfair labour practices on the part of the employer under Item 9 of Schedule IV, of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU and PULP Act") and it was prayed by the employee that the order dated 8th July, 1992 and the other orders passed by the employer industry be quashed and set aside inflicting punishment of his reduction in rank with retrospective effect from 25-10-1988 and restore him in original post of Superintendent (Accounts) with full benefits of the said post. The employee averred that the employer industry is a public limited company under

the Companies Act, 1956 though its entire share capital is subscribed by Government of India. The other details of the averments are not material for deciding the controversy involved. In the written statement filed by the employer industry preliminary objection was raised regarding the maintainability of the complaint and jurisdiction of the Industrial Court to try, entertain and dispose of the complaint on the ground that since the Central Government is the appropriate government u/s 2(a) of the I.D. Act for the purposes of the subject matter in dispute and if at all the complaint is held maintainable, it is the National Tribunal which has got the jurisdiction to try, entertain and dispose of the complaint. In support of the said objection the employer industry averred that it was formed under the Ministry of Urban Development, Works, Housing and Supply of the Central Government and the activities carried out by it are directly controlled by and under the authority of Government of India. The Directors are appointed by the President of India and they are the Secretaries to the Government of India. The number of Directors as well as the salary and allowances of the Chairman, Managing Director and the Directors are determined by President of India. The appointment of the General Manager (Finance) is done by the Directors in consultation with the Government of India and the President of India from time to time issues directions in regard to the conduct of business and affairs of the employer industry company. The entire share capital belongs to the Central Government. It was thus submitted that for all practical purposes, it is the Central Government which exercises its control and supervision over the working of the employer industry and, therefore, Central Government is an appropriate government in respect of the present matter and the present complaint was not maintainable and Industrial Court has no jurisdiction to try and dispose of the complaint. On merits also the complaint was contested by the employer industry. The Industrial Court inter alia framed the issues whether the complaint filed was maintainable or not in the law on the ground that Central Government was the appropriate government and whether the Industrial Court shall have jurisdiction to try and entertain the complaint under the MRTU and PULP Act. The Industrial Court held that complaint was maintainable and u/s 2(a) of the I.D. Act, the employer industry cannot be held to be under the control of the Central Government since no notification to that effect has been issued. Accordingly, the Industrial Court held that the complaint was maintainable and that it has jurisdiction to try and decide the complaint.

3. Ms. Shobha Gopal the learned counsel appearing for the Petitioner contend that for the purpose of the present matter, the appropriate government in relation to the employer industry is the Central Government since the employer industry carries on its activities by or under the authority of the Central Government and according to her, therefore, even if no notification has been issued by the Central Government that the employer industry is controlled by the Central Government the appropriate government in relation to employer industry is Central Government u/s 2(a) of I.D. Act. In support of her contention, she relied upon the recent decision of the Apex Court in *Air India Statutory*

Corporation, ETC v. United Labour Union, 1997 1 CLR 292.

4. The employee appears in person and he submits that he has nothing more to add to the reasons given by Industrial Court in it's order dated 18-3-1997 and the said order is justified in law.

5. From the available material on record, it is borne out that the employer industry is a company registered under the Companies Act. Its entire share capital is subscribed by the Government of India. The Chairman, Managing Director and other Directors of the employer industry are appointed by the President of India. The Directors who are appointed by the President of India are the Secretaries to the Government of India. The President of India determines the number of Directors and so also the salary and allowance of the Chairman, Managing Director and the Directors. The President of India issues directions in regards to the conduct of business and affairs of the employer industry from time to time. In view of these facts it is to be found out whether the appropriate government in relation to employer industry is the Central Government or not.

6. Section 2(a) of the I.D. Act reads thus :

"Section 2(a) "appropriate Government" means. -

(i) in relation to any industrial disputes 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 (a Dock Labour Board established u/s 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India established u/s 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948), 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 3-A 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 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "Indian Airlines" and "Air India" Corporations established u/s 3 of the Air Corporations Act, 1953 (27 of 1953), 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 Commission established u/s 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959), or the Deposit Insurance and Credit Guarantee Corporation established u/s 3 of the Deposit Insurance and Credit Guarantee 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 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation 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 International Airports Authority of India constituted u/s 3 of the

International Airports Authority of India Act, 1971 (43 of 1971), 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 4 of the National Housing Bank Act, 1987 (53 of 1987), 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;

[(aa) "arbitrator" includes an umpire;]

[(aaa)] "average pay" means the average of the wages payable to a workman -

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days,

preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked".

7. If an industry is carried on by or under the authority of the Central Government, obviously the appropriate government u/s 2(a)(i) shall be the Central Government and it will not be necessary that such industry has to be specified in the notification by the Central Government that such industry is under its control or authority. The relevant part of section 2(a)(i) "appropriate Government" means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or ... concerning any such controlled industry as may be specified in this behalf by the Central Government.. "the Central Government" is clear and unambiguous. In relation to an industry which is carried on by or under the authority of Central Government, the appropriate Government is Central Government and such industry is to be distinguished from "controlled industry" referred to in the section. Section 2(a)(i) deals with number of industries in relation to which Central Government is appropriate Government. The first part of Section 2(a)(i) "in relation to any industrial dispute covering any industry carried on by or under the authority of the "Central Government" is independent provision by itself. The legislature has separated each category of industry mentioned in S. 2(a)(i) by use of word "or" and therefore the Industrial Court was not justified and rather seriously erred in holding that no notification that industry is "controlled industry" has been issued by Central Government.

8. Since in my view the question can be answered directly on the basis of the test laid down by the Apex Court in Air India Statutory Corporation, it would be

advantageous to refer to the said judgment of the Apex Court. One of the questions before the Apex Court in the Air India Statutory Corporation, was whether in relation to the Air India Statutory Corporation the Central Government was appropriate government u/s 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970. Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970, prior to 1986, was as under :

"2(1)(a) "Appropriate Government" means - (1) in relation to -

(i) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(ii) any establishment of any Railway, Cantonment Board, Major Port, Mine or Oil-field, or

(iii) any establishment of a banking or insurance company, the Central Government,

(2) In relation to any other establishment the Government of the State in which that other establishment is situated".

9. The expression used in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970, prior to the amendment Act 14 of 1986 viz. "appropriate government" means in relation to any establishment pertaining to any industry carried on by or under authority of the Central Government, is identical to the expression occurring in Section 2(a)(i) of the I.D. Act that "appropriate government" means in relation to an industrial dispute concerning any industry carried on by or under the authority of the Central Government, the Central Government. The Apex Court after consideration of the host of authorities, virtually the entire case law on the subject laid down the principles in paragraph 21 of the report which read thus :

"(1) The constitution of the Corporation or instrumentality or agency or corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the control of appropriate Government under the Act.

(2) If it is a statutory Corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is control by or under the authority of the appropriate Government.

(3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2) it is an instrumentality or agency of the State.

(4) The State is a service Corporation. It acts through its instrumentalities, agencies or persons - natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principle.

(6) The frame-work of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

(8) This existence of deep and pervasive state control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, memorandum of association or bye-laws or articles of association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and workmen, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workman.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions".

10. The Apex Court emphasised that the word "control" has to be interpreted in the changing commercial scenario broadly in keeping with the constitutional goals and perspectives and the Apex Court observed thus :

"21. It must be remembered that the Constitution adopted mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial

production and services, domestic consumption goods and large scale industrial productions. Even some of the public Corporations are thrown open to the private national and multi-national investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz. Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the fundamental rights enshrined in the Constitution. The word "control" therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives".

11. From the aforesaid principles it would be seen that though no single test is decisive to reach the conclusion whether particular industry is carried on by or under the authority of Central Government yet, totality of circumstances in the light of the aforesaid principles may provide firm basis for conclusion. A company floated from public exchequer and owned wholly by Central Government is indicative of the fact that it is controlled by or under the authority of the Central Government. The employer industry is admittedly wholly owned by Central Government and entire share capital has been contributed by it. Though the commercial activities is carried on by the employer industry in accordance with its bye-laws and Memorandum of Association yet the employer undertaking is nothing but an extended arm of Government and it apparently is an instrumentality or agency of the "State" and is "State" within the meaning of Article 12 of Constitution of India. Its acts, rules, regulations and governance power are subject to constitutional obligations and have to be in conformity with public law principles. The existence of deep and pervasive state control depends upon the fact and circumstances in a given situation. In the present case, it would be seen that the entire share capital of the employer was contributed by Central Government and it belongs to the Central Government. The Chairman, Managing Directors and other Directors are appointed by the President of India. The number of Directors, the salary and allowances of the Chairman, the Managing Director and Directors are determined by President of India. The directions are issued by President of India from time to time in regard to the conduct of business and affairs of the employer industry. It would thus, be seen that for all practical purposes, it is the Central Government which exercises control and supervision over the working and function of the employer industry and the employer industry is virtually the agency and instrumentality of the Government of India. In relation to the employer industry, unhesitatingly, the appropriate Government is Central Government u/s 2(a)(i) of the I.D. Act.

12. The Industrial Court considered this question in the following manner :

"Mr. Gopalkrishnan strongly objected to the present complaint on the point of jurisdiction. It is pleaded by the Respondents that the Central Government is the appropriate Government and therefore, the Complaint should have been filed in the Central Industrial Tribunal and not in the Industrial Court, Mumbai. Thus, on this count also, the complaint is not maintainable and hence, liable to be dismissed. Mr. Gopalkrishnan vehemently argued that the pervasive control on the Respondent company is that of the Central Government and hence, the Central Government is the appropriate Government. In this connection, he relied on 1996 (6) SCALE 70, between Air India Statutory Corporation v. Bombay Labour Union. Relying on this authority, he vehemently argued that the company is completely controlled by the Central Government and, therefore, the appropriate Government is the Central Government, though specifically the Respondent Company's name is not mentioned in Section 2(a)(i) of the Industrial Disputes Act, 1947. It is an admitted position that the company is not specified in Section 2(a)(i) of the Industrial Disputes Act, 1947. Mr. Bhatt vehemently argued that the authorities relied upon by the company cannot be made applicable to the case on hand as they are merely on the point of controlled industry. Besides, the facts of the present case before me and the facts of the authorities cited before me are distinct and hence, I most humbly submit that the said authority cannot be made applicable in the instant case. In this connection, reliance can also be placed on the Supreme Court authority on Tata Memorial Hospital v. Dr. Sharma, in which it is held that merely funding and controlling the institution are not sufficient to bring the institution within the purview of the Central Government. He also further argued that there is no Notification to the effect that the industry is controlled by the Central Government. Under these circumstances, I turn down the arguments of Mr. Gopalkrishnan that the Central Government is the appropriate Government is the instant case".

13. It is surprising that though the Air India Statutory Corporation was cited and referred before the Industrial Court, the Industrial Court did not care to consider the principles laid down therein and except mentioning the said judgment in paragraph 36 of the order has not at all applied it's mind to the principle laid down by the Apex Court nor tried to apply the said principles to the facts in hand. The Industrial Court erroneously referred to the judgment of this Court in Tata Memorial Centre v. Sanjay Sharma (Dr.), 1996 2 CLR 964 as judgment of the Apex Court and observed that in the Tata Memorial Hospital, it was held by the Supreme Court that merely funding and controlling the institution were not sufficient to bring the institution within the purview of the Central Government. First of all I may observe that Tata Memorial Centre judgment relied upon by the Industrial Court is not the judgment of the Apex Court, but a judgment of this Court. Secondly, the said judgment does not deal conclusively on the question of appropriate government with reference to "Tata Memorial Centre" funded and financed by the Central Government because the Division Bench held that the matter arose before it from an order passed at interim stage purely against the

prima facie finding and even the Industrial Court has not decided the preliminary issue of "appropriate government" with reference to Tata Memorial Centre and, therefore, no case for interference was made out in extraordinary jurisdiction under Article 226 of Constitution of India. The judgment of this Court in Tata Memorial Centre, therefore, is not an authority on the proposition whether funding and controlling of the institution are not sufficient to bring the institution within the purview of the Central Government. Moreover, now in view of the authoritative pronouncement of the Apex Court in Air India Statutory Corporation and the tests laid down therein, any observation made by this Court inconsistent with these principles have to be ignored being not correct exposition of law. There is no merit in the observation made by the Industrial Court that there was no notification to the effect that the industry is controlled by the Central Government and, therefore, appropriate government is not Central Government. I have already held that if the employer industry is carried on by or under the authority of the Central Government, no notification is required to be issued to the effect that industry is controlled by Central Government and the fact that such industry is carried on by or under the authority of Central Government would make Central Government an appropriate government in relation to the said industry u/s 2(a)(i) of I.D. Act. The Industrial Court, therefore, completely misdirected itself on the question of appropriate government and failed to apply its mind to the principles laid down by the Apex Court in the Air India Statutory Corporation and the application of the said principles to the facts of the case in hand. For the reasons aforesaid, I have no hesitation in holding that in relation to the employer industry the Central Government is appropriate government u/s 2(a) of the I.D. Act and, therefore, the complaint filed by the employee was not maintainable and could not be tried by the Industrial Court, and, the order passed by the Industrial Court on 18-3-1997 is without jurisdiction.

14. Writ petition is accordingly allowed. The order passed by the Industrial Court dated 18-3-1997 impugned in the present writ petition is quashed and set aside. Rule is made absolute in aforesaid terms. No costs.

15. Writ petition allowed.