

(1997) 03 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : S.W.P. 444 of 1989

National Hydro Electric Power Corporation	APPELLANT
Vs	
M.M.Padha and others	RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2(a)

Citation : (1997) KashLJ 552 : (1998) 1 SCT 112 : (1998) SriLJ 165 : (1998) SriLJ 164

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : J.P.Singh , D.S.Thakur, Advocates appearing for the Parties

Judgement

1. This is a petition moved for grant of writ of certiorari quashing the award passed by the Industrial TribunalcumLabour Court, Chandigarh on

21.04.1989 in case No. ID 38/87.

2. Mr. J.P.Singh, appearing for the petitionerCorporation, has laid stress on the solitary ground of nonmaintainability of the reference. He has

argued that a reference to the Industrial Tribunal can be made only under Section 10 of the Industrial Disputes Act, (hereinafter called the Act).

According to him it is the domain of the 'appropriate Government' to refer a dispute, if it, according to such Government, exists, to the Tribunal.

'Appropriate Government* is fully defined in sec. 2 of the Act. Sec.2(a) goes to define 'appropriate Government1 as the Central Government in

respect of industrial disputes concerning any industry carried on by or under the authority of the Central Government. Then hurriedly list of other

companies in respect of which the Central Government shall be the appropriate Government is detailed out. For all other Corporations which do

not fall within the list and which are not carried on by or under the authority of the Central Government, it is the State Government by virtue of

Sec.2(a) which is the 'appropriate Government'.

3. N.H.P.C. according to Mr. Singh, is no doubt a Corporation registered under Companies Act but it neither is carried on by the Central

government nor is run under the authority of the Central Government. It also does not find place in the list of other companies, to which a reference

has already been made. Therefore, manifestly it was the State Government which was 'appropriate Government' for purposes of this reference.

Once a reference is made by a Government which is not the 'appropriate Government, same is not maintainable and, therefore, the award based

on such reference is beyond jurisdiction.

4. I have given my thoughtful consideration to the matter. This star point finds eminent place in the writ petition and has also been raised in the

counter affidavit by the respondents. I have gone through that part of the award which has dealt with this point.

5. The Industrial Tribunal has proceeded on the premise that the factum of N.H.P.C. being a Govt. of India enterprise and being wholly owned by

the Govt. of India is admitted. This observation finds place at internal page 4 of the award. I have gone through the written statement filed by the

petitioner corporation before the Tribunal. Para 8 of that counter affidavit is the pertinent part of the stand taken by the corporation qua this

assertion. This para is reproduced in verbatim as under:

That the Project is now administered by NHPC which is a company registered under the Companies Act, 1956. No one is now in the

employment of Govt. Any dispute with regard to an employee stated to be on Salal Project, actually raises a dispute with NHPC and not with

Govt. of India. Even as per the contract with the Govt. the NHPC is the agent but to execute and administer the project affairs by virtue of its own

articles and Memorandum of Association and therefore the NHPC is neither run by the Govt. as Department nor it is running under the authority of

Government"".

6. A plain reading of this para not only negatives the observation of the Corporation having made an admission but also towards its conclusion,

boldly asserts that N.H.P.C. is neither run by the Government of India as a

Department nor is running under its authority. There is a dear line of distinction between a Corporation, the shares of which are absolutely owned by the Government and one run by or carried on under the authority of the Government. I find that this point has not been taken care of. Therefore, I find that in imputing admission to the petitioner Corporation the Tribunal has committed an error.

7. Mr. Singh has referred to a judgment of the apex Court, titled H.E.M. Union Versus State of Bihar, reported in AIR 1970 SC 82 which has a direct bearing on the fact of the case. In this case Heavy Engineering Corporation Ltd. Ranchi was a Corporation incorporated under Companies Act. Entire share capital of this corporation were held by the President and certain officers of the Union Government, but the Corporation was not being run by or under direct control of the Central Government or by any of its departments. The Supreme Court held that the company and its share holders being distinct entities, the share capital factor will not make the Corporation as an agent either of the President or the Central Government. That answers the question and we revert back to locate as to which of the Government in the present case would be the 'appropriate Government' for purposes of the reference.

8. On all fours I find that it was the State Government which was 'appropriate Government' because the Corporation does not directly or indirectly come within the purview of those Corporations/Undertakings in respect of which the Central Government could be said to be the 'appropriate Government'. That being so the reference arises out of an authority which was not competent to make the same. Therefore, same was not competent. This plea, although taken was not rightly considered. On the other hand on the fiction of admission, which bears thin on its reality, the point was decided against the Corporation and award passed.

I accordingly, while allowing this petition, set aside the award as arising out of an incompetent reference.

9. No order as to costs.