

(1990) 06 KAR CK 0021
In the Karnataka High Court
Case No : W.A. No. 992 of 1985

Regional Labour Commissioner, Bangalore and others APPELLANT
Vs
T.K. Varkey and Co. and another RESPONDENT

Date of Decision : 22-06-1990

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2 (a)
Industrial Disputes Act, 1947 — Section 2 (a)
Minimum Wages Act, 1948 — Section 2 (b), 2 (g), 20 (3)

Citation : (1991) 62 FLR 718 : (1991) ILR (Kar) 946

Hon'ble Judges : K.A. Swami, J; D.R. Vithal Rao, J

Bench : Division Bench

Judgement

K.A. Swami, J.—This appeal is preferred against the order dated March 11, 1985, passed in W.P. No. 8398 of 1984. The appellants herein were respondents 1 to 3 and respondents 1 and 2 herein were the petitioners in the writ petition. In this appeal, the appellants will be referred to as respondents 1 to 3 and respondents 1 and 2 as petitioners.

2. In the writ petition, the petitioners have sought for quashing the orders dated March 31, 1984, passed by the first respondent on Claim Application Nos. MW 92 of 1983 and MW 93 of 1983 (Annexure-H). Those application were filed by the Labour Enforcement Officer (respondent 2) before the 1st respondent under sub-section (3) of Section 20 of the Minimum Wages, Act, 1948 (hereinafter referred to as "the Act"). The Enforcement Officer claimed that the wages paid by the petitioner to workmen employed for construction of staff quarters for Railway Administration at Puttenahalli, Yelahanka Hoble, were not in conformity with the notification issued by the Central Government fixing the minimum wages; that as the work was being carried on for the purpose of the Railways and within the Railways Establishment, the appropriate Government was the Central Government under the Act, therefore, the notification issued by the Central Government prescribing minimum wages for the employment in the building operations applied to it and as such the workmen were required to be paid the

wages as per the notification issued by the Central Government. Accordingly, on the basis of the minimum wages prescribed by the Central Government and the actual wages paid by the petitioners to the workmen, the difference between them was claimed by the second respondent - Labour Enforcement Officer as payable to the employees by the petitioners. The difference as claimed in the application was as follows :

"1. Claim Application No. MW 92 of 1983 :

A. Difference between fixed minimum rates of wages and the actual wages paid for the period from September 4, 1982 to February 20, 1983. - Rs. 11,192.70

B. Compensation amounting to - Rs. 1,11,927.00

2. Claim Application No. MW 93 of 1983 :

A. Difference between the fixed minimum rates of wages and the actual wages and the actual wages paid for the period from January 27, 1983, to June 26, 1983. - Rs. 4,702.00

B. Compensation amounting to - Rs. 47,020.00

Thus, in all, the second respondent claimed that the petitioners were required to pay a sum of Rs. 1,74,841.70 to the employees and requested the first respondent to direct the petitioners to pay the same to their employees.

3. The applications were contested by the petitioner on two grounds : (i) that Puttenahalli, where the scheduled employment was carried on, was situated beyond 8 k.m. from the periphery of the Corporation limits and as such it did not attract the rates of minimum wages fixed for workmen working within the limits of the Corporation of the City of Bangalore and within 8 k.m. from the periphery of limits under the notification issued by the Central Government fixing the minimum wages; and (2) that the scheduled employment was not being carried on by or under the authority of the Central Government. Therefore, the Central Government was not the appropriate Government and the State Government was the appropriate Government, that the wages were being paid as per the minimum wages fixed by the State Government; that the second respondent being a Central Government employee and the Central Government not being the appropriate Government, it had no authority to file the applications and request the first respondent to enforce the minimum wages notification by the Central Government.

4. As far as the contention based on the place where the scheduled employment was carried on is concerned, on the basis of the report submitted by the Deputy Commissioner that Puttenahalli was situated within 8 k.m. from the periphery of the Corporation limits of the City of Bangalore, the first respondent negated the said contention. This finding was not challenged before the learned single Judge. Consequently, the learned single Judge did not disturb the said finding. No contention is urged before us challenging the said finding. Further, the finding

that Puttenahalli is situated within 8 km. from the periphery of the Corporation limits, is based on the report made by the Deputy Commissioner. It is a finding of fact. Therefore, we have to proceed on the basis that Puttenahalli is situated within 8 km. from the periphery of the limits of the Corporation of the City of Bangalore.

5. On the other contention, the first respondent held that the scheduled employment took place by or under the authority of the Railways inasmuch as the scheduled employment was carried on for the construction of staff quarters as per the terms of the contract entered into by the petitioners with the Railways; that under the terms of the contract, the Railways had the power of supervision and control on the quality of the material used in construction work and also on the construction as such. Therefore, the scheduled employment was being carried on by or under the authority of the Railways. Hence, the first respondent held that the Central Government was the appropriate Government for the purposes of the Act. Therefore, the notification issued by the Central Government under the Act fixing the minimum wages to the scheduled employment in the building operations was applicable.

6. The first respondent also came to the conclusion that the difference between the rates of minimum wages as fixed by the Central Government and the actual wages paid by the petitioners was as claimed by the second respondent. As far as compensation amount was concerned, even though the statute prescribed that it was open to the authority to award ten times the difference of the amount, the first respondent, in exercise of his judicial discretion, awarded the compensation for a like sum.

7. The learned single Judge, following the earlier decision of this Court in *Bharatiya Mazdoor Union v. I. R. R. Canteen* (1979) 53 FJR 356, has held that the Central Government is not the appropriate Government and it is the State Government which is the appropriate Government. Therefore the notification by the State Government fixing the minimum wages for the scheduled employment in building operation is applicable and as such the order passed by the first respondent on the basis of the notification issued by the Central Government fixing the minimum wages for the scheduled employment of building operation is not sustainable. Accordingly, the learned single Judge has allowed the writ petition and quashed the impugned order dated March 31, 1984. Hence this writ appeal is preferred by the respondents Nos. 1 to 3 in the writ petition.

8. Sri Shailendra Kumar, learned Additional Central Government Standing Counsel appearing on behalf of the appellants in this appeal and learned counsel, Sri B. C. Prabhakar, appearing on behalf of the respondents in this appeal, have addressed their respective arguments.

9. In the light of the several contentions urged on both sides the point that arises for consideration is whether in respect of the scheduled employment in building operation carried on by the petitioners (respondents in the writ appeal) for

construction of staff quarters for the Railway establishment as contractors, the Central Government is the appropriate Government or not.

10. "Appropriate Government" is defined u/s 2(b) of the Act as under :

""appropriate Government" means - (i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government."

"Scheduled employment" is defined u/s 2(g) of the Act as follows :

""Scheduled employment" means an employment specified in the Schedule or any process or branch of work forming part of such employment."

The employment in question falls under entry 7 of the Schedule to the Act inasmuch as it is an employment in building operation.

11. It is contended on behalf of the respondents (appellants) by Sri Shailendra Kumar, learned Additional Central Government Standing Counsel, that as the employment was carried on in the railway establishment, viz., for construction of staff quarters for the Railways in the area belonging to the railway administration, even though the workmen were employed by the contractor who had undertaken the work of construction of staff quarters for the Railways, the appropriate Government was the Central Government because the Railways had control over the area as well as the construction and the construction was for the Railways only.

12. On the contrary, it is contended on behalf of the petitioners (respondents in the writ appeal) that even though the scheduled employment was carried on for construction of staff quarters for the Railways within the area belonging to the Railways, the scheduled employment was under the contractor and the scheduled employment was not carried on by or under the authority of the Railways, therefore, the case fell under clause (ii) of Section 2(b) of the Act and not under clause (i). Hence the State Government was the appropriate Government. It is further submitted that neither the Railways nor the Central Government had any power or control over the employment of the workmen by the contractor to carry on the building operation work and it was the contractor who employed the workmen and they worked under his control and supervision. Therefore, it did not fall under the first portion of the definition of "appropriate Government."

13. Hence, the point of consideration as already indicated is as to whether having regard to the building operation work in question the "appropriate Government" is the Central Government or the State Government, within the meaning of Section 2(b) of the Act.

14. Learned Additional Central Government Standing Counsel has placed reliance on the following decisions in support of his contention that the "appropriate

Government" is the State of Maharashtra Vs. Mohanlal Devichand Shah, Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, Labourers working on Salal Hydro Project v. State of Jammu and Kashmir (1983) 62 FJR. 323 SC; Sushil Kumar Chakraborty and Others Vs. LIC of India and Others, and M. E. S. Builders v. Union of India (W.P. No. 594 of 1987 of the Jammu and Kashmir High Court), whereas learned counsel for the writ petitioners, who are respondents in this appeal, has placed reliance on the following decisions : (1) Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, (2) Carlsbad Mineral Water Manufacturing Co. Ltd. v. P. K. Sarkar (1952 I LLJ 448); (3) Bharatiya Mazdoor Union v. I. R. R. Canteen (supra); (4) Abdul Rehaman Abdul Gafur and Another Vs. E. Paul and Others, (5) Indian Naval Canteen Control Board, Kerala v. Industrial Tribunal, Ernakulam (1965 II LLJ 366); (6) National Textile Corporation v. Industrial Tribunal (1979) Lab IC 1027 (All); (7) Management of Bihar Khadi Gramodyog Sangh v. State of Bihar (1977) Lab IC 466 (Pat) and (8) K. E. Koshy v. State of Karnataka (1987) 71 FJR 548 (Kar).

15. From the definition of the expression "appropriate Government" as reproduced in para 10 above, it is clear that in order to attract clause (i) of Section 2(b) of the Act, it is necessary that the scheduled employment is carried on by or under the authority of the Central Government or a railway administration or in relation to a mine or major port or any Corporation established by the Central Act, by the Central Government. In this case, we are not concerned with the employment carried on in relation to a mine or oil field or major port on any corporation established by a Central Act. We are concerned with the scheduled employment in building operation carried on for construction of staff quarters for the railway establishment undertaken by the contractor.

16. As already pointed out, the learned single Judge has taken a view that scheduled employment is not carried on under the authority of either the Central Government or the State Government. It is carried on under the employer, even though such employment is for the purpose of construction of the work intended for the benefit of the Railways; therefore, the appropriate Government is the State Government and not the Central Government. We are of the view that the place where the employment is carried on and for whose benefit the employment is carried on, and under whose control the work connected with the employment is carried on, are the deciding factors in finding out whether the appropriate Government is the Central Government or the State Government. The legislative policy of the Act is apparent on the face of the Act. It aims at the statutory fixation of minimum wages with a view to obviate the change of exploitation of labour. Therefore, it also becomes necessary to ensure that the wages for the work carried on by a private contractor for the Central Government or the Railways or the State Government should not be less than the minimum wages fixed by the Central Government or the State Government for similar work, if it is carried on directly by the Central Government or the Railways or the State Government, as the case may be.

17. In *State of Maharashtra v. Mohanlal Devichand Shah*, (supra), the Supreme Court considered the question as to the meaning of the expression "appropriate Government" occurring in the Act. In that case the employment in stone breaking and stone crushing, which is one of the scheduled employments under the Act, was carried on by the private contractors by employing the workmen. It was contended that as scheduled employment was under the contractor and it was not being carried on by or under the authority of the Central Government, the "appropriate Government" was the State Government. The Supreme Court negated the contention and held thus *State of Maharashtra Vs. Mohanlal Devichand Shah*,

"In our opinion, as stated in Halsbury's Laws of England, Third Edition, Volume 26, page 317, the word "mine" is not a definite term, but is one susceptible of limitation or expansion according to the intention with which it is used. In Section 2(b) of the Act, we have to see the context in which the word has been used. What the legislature is purporting to do is to demarcate the jurisdiction of the State Governments and the Central Government in respect of minimum wages to be paid to persons employed in the employments enumerated in the Schedule. Entry No. 35 in List I of the Schedule VII of the Government of India Act, 1935, was "regulation of labour and safety in mines and oil fields". Entry No. 36 read "regulation of mines and oil fields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expedient in the public interest". It is not seriously contested that in Entries Nos. 35 and 36 the word "mines" would include quarries. The Mines Act, 1923 (IV of 1923), which was the existing law when the Government of India Act came into force, made provisions regarding health and safety in mines and regulated hours and limitations of employment in the mines. The word "mine" has been defined to mean any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine, provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke-making or the dressing of minerals. Therefore, if we examine the definition of "appropriate Government" in Section 2(b) in the context and in the background of the Government of India Act and the existing law, it seems to us that the Central Legislature must have intended to include quarries in the word "mine", otherwise it would be rather incongruous that some matters such as health and safety, hours and employment in quarries should be regulated by the Central Government and minimum wages by the State Governments. Further, there is no indication whatsoever in the Act that the word "mine" has the narrower meaning suggested by the learned counsel for the respondent.

If the word "mine" is held to include a quarry, the next question that arises is whether stone-breaking or stone-crushing in a quarry is within the Schedule. While interpreting entry No. 8 in the Schedule, this Court observed in *Madhya*

Pradesh Mineral Industry Association Vs. The Regional Labour Commissioner Jabalpur and Others, "When we speak of stone-breaking or stone-crushing, normally we refer to stone in the sense of "piece of rock" and that would exclude manganese. Employment in stone-breaking or stone-crushing in this sense would refer to quarry operations."

This Court thus read entry No. 8 to refer to quarry operations, and we hold that stone-breaking or stone-crushing in a quarry is within the Schedule.

Thus, reading item No. 8 of the Schedule and Section 2(b) of the Act together, it seems to us that the definition demarcates the jurisdiction of the Central Government and the State Governments in this way; if the employment in stone-breaking or stone-crushing is in a quarry, then it is within the jurisdiction of the Central Government; if the employment in stone-breaking or stone-crushing is not in a quarry, it is the State Government that will have jurisdiction. We are unable to appreciate the observations of the High Court that the operation of stone-breaking and stone-crushing in a stone-quarry does not fall within item 8 of the Schedule and that it is necessary that Parliament should amend item 8 of the Schedule."

18. Thus the aforesaid decision goes to show that the place of work and the authority who has jurisdiction or the control over the work as well as the place where the work or the employment is carried on will have a bearing on the question as to whether the Central Government or the State Government is the "appropriate Government".

19. No doubt Sri Prabhakar, learned counsel appearing for the writ petitioners, tried to distinguish the decision contending that as the stone-breaking and stone-crushing work was being carried on in a mine, it was completely under the control of the Central Government, hence necessarily, the appropriate Government was the Central Government. Therefore, the decision in the said case turned upon the facts of that case and as such it was not applicable to the case on hand. If that were to be so, there was no difficulty in holding that the employment as such was being carried on by the contractor by or under the authority of the Central Government, therefore, the Central Government was the "appropriate Government". It is clear from the said decision that the emphasis is on the place where the scheduled employment takes place and the authority who exercises jurisdiction or control over the work as well as the place where the work or the employment is carried on.

20. In the instant case, the employment had taken place in the place belonging to the Railways and the employment or the work carried on was for the purpose of construction of staff quarters for the benefit of the Railways. The work was being carried on by or under the authority of the Railways only. The fact that the contractor had employed the workmen was not a deciding factor because actually the work was carried on by or under the authority of the Railways only. Hence the decision in *State of Maharashtra v. Mohanlal Devichand Shah*, (supra) applied

to the facts of the case also.

21. In *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir*, (supra) (hereinafter referred to as "Salal Hydro Project" case) the Supreme Court in unequivocal terms held that as the project work was being carried on by or under the authority of the Central Government, the Central Government was the "appropriate Government" in relation to the establishment pertaining to the project work and the contractors were licensed by the licensing officers appointed by the Central Government. In that case the question was as to whether the minimum wages fixed by the Central Government were applicable to the workmen engaged by the private contractors for executing different portions of the work under the project, i.e., Salal Hydro Project. It was held that the Central Government was the appropriate Government. Since the project was being carried on by or under the authority of the Central Government, the minimum wages fixed by the Central Government were applicable. However, it so happened that the minimum wages fixed by the Central Government were less than the minimum wages fixed by the State Government. Therefore, it was further observed that such anomalous situation should be brought to the notice of the Central Government so that the said anomaly could be removed.

22. No doubt, *Salal Hydro Project* case, (supra), did not specifically refer to the definition of "appropriate Government" under the Minimum Wages Act. The principle laid down therein is that if the work executed comes under the authority of the Central Government, the Central Government is the "appropriate Government". In the instant case also the staff quarters constructed by the contractor were under the control of the Railways only and were in fact intended for the Railways. Hence under the Minimum Wages Act, the Central Government was the appropriate Government.

23. In *Regional Provident Fund Commissioner, Karnataka v. Karnataka Provident Fund Employees' Union* (supra), the question considered by the Supreme Court was as to which was the "appropriate Government" under the Industrial Disputes Act. Having regard to the various provisions of the Provident Funds Act and the nature of the business carried on by the Central Board, the State Board, the Regional Committee and the Regional Provident Fund Commissioner, it was held that the State Government was not the appropriate Government u/s 2(a) of the Industrial Disputes Act in the matter of industrial disputes arising between the management and the workmen of the Regional Provident Fund Organisation.

24. The definition of "appropriate Government" occurring in the Industrial Disputes Act is not in pari materia with that of the one contained in the Minimum Wages Act, inasmuch as the definition of "appropriate Government" under the Industrial Disputes Act is in relation to an industry carried on by or under the authority of the Central Government, or by a railway company, etc., whereas the definition of "appropriate Government" under the Minimum Wages Act in relation to any scheduled employment carried on by or under the Central Government, or Railways, etc. is the Central Government and in relation to any other scheduled

employment, the State Government. In the first one, the deciding factor is as to whether an industry is carried on by or under the authority of the Central Government or the State or any railway company, etc., whereas in the second one, it is in relation to scheduled employment carried on by or under the authority of the Central Government or Railways, etc. If it does not fall under clause (i) of Section 2(b) of the Act, the State Government is the appropriate Government. Therefore, the decisions rendered under the Industrial Disputes Act cannot be held to cover the issue involved in the case on hand as to "appropriate Government" under the Minimum Wages Act.

25. The learned single Judge has proceeded on the basis that the definition of "appropriate Government" contained in Section 2(a) of the Contract Labour (Regulation and Abolition) Act, 1970, and the definition of similar expression contained in the Minimum Wages Act are in pari materia, whereas it is not so. The definition of "appropriate Government" in the Contract Labour (Regulation and Abolition) Act is in relation to any establishment pertaining to an industry carried on by or under the authority, whereas the definition of "appropriate Government" in the Minimum Wages Act is in relation to scheduled employment carried on by or under the authority. Thus, the one is in relation to an establishment carried on by or under the authority and the other is in relation to scheduled employment. Therefore, the decision rendered under the Contract Labour (Regulation and Abolition) Act with reference to "appropriate Government" cannot also have full bearing on the issue arising under the Minimum Wages Act as to which is the "appropriate Government."

26. The learned single Judge is also of the view that the earlier decision of this Court in I.R.R. Canteen's case, (supra), covers the case on hand and that the decision is rendered on the basis of the judgments of the Supreme Court in Heavy Engineering Mazdoor Union, (supra) and Carlsbad Mineral Water Manufacturing Co., (supra), which is approved by the Supreme Court in Heavy Engineering Mazdoor, (supra). Therefore, naturally Sri Prabhakar, learned counsel appearing for the writ petitioners, placed reliance very heavily on I.R.R. Canteen's case, (supra), and Heavy Engineering Mazdoor Union case, (supra), and also on Carlsbad Mineral Water Manufacturing Co. case (supra).

27. We shall first take up Heavy Engineering Mazdoor Union case, (supra). In this case, the expression "appropriate Government" occurring in Industrial Disputes Act was considered. It may be relevant to notice that the dispute arose between the Heavy Engineering Corporation Ltd. and its workmen. The question arose as to whether the Corporation carried on the industry by or under the authority of the Central Government. It was held that the words "under the authority of" mean pursuant to the authority such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Obviously, a company incorporated under the Companies Act, as is well known, has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. This new personality emerges from the moment of its

incorporation and it begins to function as an entity. It was also held that the mere fact that the entire share capital was contributed by the Central Government and all its shares were held by the President and certain officers of the Central Government, did not make any difference. The company and the shareholders being distinct entities, the fact the President and certain officers held all its shares did not make the company an agent either of the President or the Central Government. It was also further held that certain extensive powers were conferred upon the Central Government, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers were derived from the company's memorandum of association and articles of association and not be reason of the company being the agent of the Central Government. The question whether the Corporation was the agent of the State Government must depend on the facts of each case. Where a statute setting up a Corporation so provided, such a Corporation could easily be identified as the agent of the State as in *Graham v. Public Works Commissioners* (1901) 2 KB 781. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf even though it was controlled wholly or partially by government Department, will be ordinarily presumed not to be a servant or agent of the Government. The definition of the word "employer" as contained in the Industrial Disputes Act was also taken into consideration. It was held that the definition of the word "employer" on the contrary suggested that an industry carried on by or under the authority of the Government meant either the industry carried on directly by a department of the Government such as the Posts and Telegraphs or the Railways or one carried on by such Department through the instrumentality of an agent. Therefore, it was held that the Central Government was not the appropriate Government. The State Government was the appropriate Government.

28. Thus, from the aforesaid decision, it is clear that the question as to whether the Central or the State Government was the appropriate Government was decided on the basis as to whether the industry was being carried on by or under the authority of the State Government or Central Government. It was held that the State Government was the "appropriate Government" because the company was not the agent of the Central Government.

29. In the instant case, as already pointed out, the place where the scheduled employment is carried on and for whose benefit the employment is carried on and under those control the work connected with the employment is carried on, are the deciding factors and not the fact as to who actually employs the workmen. Therefore, it is not possible to hold that *Heavy Engineering Mazdoor Union's* case, (supra), governs the case where the scheduled employment is carried on in a place over which the Central Government or the Railways, as the case may be, has control and the work is actually being carried on for the benefit of the Central Government or the Railways over which the Central Government,

or the Railways, as the case may be, has got full control. Therefore, the decision in Heavy Engineering Mazdoor Union's case, (supra), does not apply to the case on hand.

30. In Carlsbad Mineral Water Manufacturing Co. Ltd. case, (supra), the company entered into a contract to supply mineral water to the Central Government. It was held that the mere fact that the company had entered into a contract to supply certain of its products, could not make the industry one carried on by or under the authority of the Central Government, therefore, it was held that the State Government was the appropriate authority. The reasons stated by us holding that the decision in Heavy Engineering Mazdoor Union's case (supra), does not apply to the case on hand will equally apply to Carlsbad Mineral Water Manufacturing Co. Ltd. case, (supra) also.

31. As far as Bharatiya Mazdoor Union is concerned, (supra), following the decisions in Heavy Engineering Mazdoor Union case, (supra) and Carlsbad Mineral Water Manufacturing Co. Ltd. case, (supra), it had been held therein that a canteen run by a private person in the railway premises under the terms and conditions of the licence and with the help or assistance of the railway department cannot be regarded as an agent of the Railways; consequently, the canteen is not carried on under the authority of the Railway Administration. It has also been further held that it is obligatory for the Railways to provide canteen facilities for the passengers and the visitors to a railway station; that the railway authorities provide for the necessary accommodation and furniture for running a canteen; therefore, it is quite natural that railway authorities exercise certain control and supervision over such canteens. This does not, however, convert a canteen run by a private person under a licence from the railway authorities, into a canteen run under the authority of Railways.

32. We are of the view that in I.R.R. Canteen case, (supra), the essential factors such as the place where the canteen was carried on and for whose benefit the canteen was carried on have not received due consideration. The canteen was carried on in the Railway establishment and for the benefit of the Railways. The Railways had full control over the place in which the canteen was carried on. The canteen was to be carried on in the prescribed manner. There was control over the quality of food items and also the working hours of the canteen exercised by the Railways. These essential factors were indicative of the fact that the actual running of the canteen was under the control of the railways and for the benefit of the Railways. Thus the canteen was carried on under the authority of the Railways. Therefore, we are unable to agree with the decision in I.R.R. Canteens case, (supra), that the canteen run by a private person in the railway establishment under the contract entered into with the railways for the benefit of the Railways, the Central Government is not the appropriate authority. Hence we are of the view that the decision in I.R.R. Canteen's case (supra), does not lay down the law correctly. When the canteen is run in the railway establishment, over which the railway has got full control, the mere fact that it is run by a

private contractor with his own workmen does not take away the control of the railway and the railways do not cease to have control over it. Therefore, the appropriate Government for the purpose of minimum wages would be the Central Government and not the State Government, as defined u/s 2(b) of the Act. Accordingly, the decision in I.R.R. Canteen's case, (supra) is overruled.

33. The other decisions at serial Nos. 4 to 7, as referred to in para 14 above as having been relied upon by Sri Prabhakar, learned counsel for the writ petitioners, are under the Industrial Disputes Act and they are more or less on the very same lines of the decision in Heavy Engineering Mazdoor Union case, (supra), which we have already considered. Therefore, for the reasons already stated it is not possible to hold that the said decisions are applicable to the case on hand because, those decisions deal with the industry or the business being carried on by the company or a private individual and not by or under the authority of the Central Government. Therefore, we do not consider it necessary to deal with them in greater detail.

34. The decision in K. E. Koshy v. State of Karnataka (supra), is rendered by a learned single Judge of this Court. In that case the expression "appropriate Government" as defined u/s 2(a) of the Equal Remuneration Act, 1976, is considered. The definition of the expression "appropriate Government" is no doubt in pari materia with the definition of the similar expression contained in Section 2(b) of the Minimum Wages Act, 1948. The decision is rendered following the decision of this Court in I.R.R. Canteen's case, (supra) and Heavy Engineering Mazdoor Union's case, (supra) and also the decision under appeal in question. As we have held that heavy Engineering Mazdoor Union's case, (supra), does not apply to the case on hand as it does not cover the aspects involved in the case on hand and the decision in I.R.R. Canteen's case, (supra), does not decide the question correctly, it follows that the decision in K. E. Koshy's case, (supra), does not lay down the law correctly. No doubt it has referred to another decision in Food Corporation of India Workers' Union v. Food Corporation of India (1985) 66 FJR 444 SC. In the said decision the Supreme Court has decided the question as to the meaning of the expression "appropriate Government" occurring in Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970. That definition is in relation to any establishment pertaining to any industry carried on by or under the authority of the Central Government and not to any scheduled employment. Therefore, it is also not possible to hold that the decision in Food Corporation of India Workers' Union case, (supra), governs the case on hand. Consequently, we are also of the view that K. E. Koshy's case, (supra), does not decide the question as to which is the "appropriate Government" under the Equal Remuneration Act, 1976, correctly. Accordingly, it is overruled.

35. In the view we take, we do not consider it necessary to refer to the decisions in Gammon India Ltd. v. Union of India, (supra), and in M.E.S. Builders' case, (supra), relied upon by the learned Additional Central Government Standing

Counsel.

36. For the reasons stated above, we hold that the Central Government is the "appropriate Government". Therefore, the Minimum Wages Notification issued by the Central Government was applicable to the wages payable to the workmen engaged in building operation for constructing the staff quarters for the railways by the writ petitioners under the contract entered into with the railways. Consequently, it follows that the writ appeal has to be allowed. It is accordingly allowed. The order under appeal is set aside and the writ petition is dismissed.

37. In the facts and circumstances of the case, there will be no order as to costs.