

(2007) 03 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No's. 30593 and 30595 of 2003

Srinidhi Anantharaman, Managing Director, Geo Desic
Techniques Pvt. Ltd. and Y.S. Nagaraja, Associate Director,
Geo Desic Techniques Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2 (1) (a) (ii)
Industrial Disputes Act, 1947 — Section 2 (a), 2 (a) (i)

Citation : (2007) 115 FLR 711 : (2007) ILR (Kar) 3055 : (2007) 5 KarLJ 446 :
(2007) 4 KCCR 266 SN

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Leela Krishnan, T.S. Srinivasa Murthy and U.R. Nayak, for the
Appellant; Aravinda Kumar, ASG for R-1, 3 to 5 in W.P. 30595/03 and for R-1 and
3 in W.P. 30593/03, Jagadish Mundargi, AGA for R-2 and 4 in WP. 30595/03 and
for R-1, 2, 4 and 5 in WP. 30593/03 and T. Rajaram, for R-6 in WP. 30593/2003,
for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—W.P. No. 30595/2003 is filed by Sri. Srinidhi Anantharaman, Managing Director of M/s. Geo Desic Techniques Pvt. Ltd., seeking declaration that, the State Government is the Appropriate Government in respect of the Hindustan Aeronautics Limited, Bangalore u/s 2 Sub-section (1) Clause (a) Sub-clause (ii) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "CLRA Act") and u/s 2 Clause (a) of the Industrial Disputes Act, 1957 (hereinafter referred to as "the I.D. Act") and for a declaration that the 5th respondent - Inspecting Officer of the State Government is the Competent Authority.

2. W.P. No. 30593/2003 is also filed for declaration similar to the above relief.

3. In these writ petitions, the only question that is raised is:

Whether the State Government is the Appropriate Government within the meaning of Section 2 Sub-section (a) Clause (ii) of C.L.R.A. Act and Section 2 Clause (a) of the Act in respect of Hindustan Aeronautics Limited, Bangalore?

4. Case of the petitioners is that, the Company as the Principal Employer by letter dated 24.4.2002, applied for licence to engage the contract labourers on the project from the competent authority under the provisions of the C.L.R.A. Act and the Rules framed by the Government of Karnataka in prescribed Form No. V and the Government of Karnataka granted licence to engage the contract labourers under the provisions of C.L.R.A. Act. Further stated that, the practice earlier was that the contract labour licence used to be obtained from the Central Governmental Authorities, however, as per the verdict of the Supreme Court in the case of M/s. Steel Authority Of India Limited And Others, the State Government is treated as appropriate Government and the State Government has been granting licence to the petitioner and in pursuance of the licence obtained from the appropriate Government, the petitioners have complied with the requirement of licence.

5. When the matter stood thus, on 20th February 2003, the third respondent without any authority or jurisdiction inspected the site of the petitioner - Company and at that time, the concerned persons of the petitioners were not present, and the Site Engineer of the petitioner - Company was alone present, and he explained to the said Inspector and also furnished the records maintained under various labour laws. The said Engineer also offered to produce all the records before the Inspecting Authority, if he was permitted to do so on a date, time fixed in this behalf. However, a show cause notice dated 20th February 2003 was issued by the respondent No. 3 calling upon the petitioner -Company to show cause as to why action should not be taken against petitioner for violation of the provisions of C.L.R.A. Act. Petitioner had sought for extension of time till 20th March 2003 to submit his explanation, and the Company promptly submitted a detailed explanation to the said Inspector on 17.3.2003 interalia, stating that, they had obtained the licence from the 5th respondent i.e., the Assistant Labour Commissioner, Department of Labour, Government of Karnataka. However, without considering the same proceedings were initiated to prosecute the petitioner - Company by the 4th respondent before the learned Metropolitan Magistrate in C.C. No. 1981/2003 (in W.P.No. 30595/2003) & C.C. No. 1979/2003 (in W.P. No. 30593/2003) under the provisions of Section 23 of the C.L.R.A. Act, alleging that the petitioner has violated the provisions of the Act by not obtaining the licence from the appropriate Government. It is in this regard, the petitioner has sought for declaration that the appropriate Government for the 6th respondent is the State Government and not the Central Government.

6. Learned Counsel for the petitioner submits that the definition of "appropriate Government" u/s 2 Sub-section (1) Clause (a) of the C.L.R.A. Act, which reads

thus:

(a) "appropriate Government" means,-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate.

Learned Counsel relying on this definition, referred to the definition of "appropriate Government" u/s 2 Clause (a) Sub-clause (i) of the I.D. Act, which reads as under:

(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 concerning 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 Limited formed and registered under the Companies Act, 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 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 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 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 ore contiguous States wider Section 16 of the Food Corporation Act, 1964 (37 of 1964), or the Airports Authority of India constituted under Sections 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 Corporation of India Limited, or the Banking Service Commission established u/s 3 of the Banking Service Commission Act, 1975 or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, the Central Government, and

(ii) ...

By referring to this definition, learned Counsel for the petitioner submitted that "appropriate Government" under the provisions of Section 2 Clause (a) Sub-clause (i) is the appropriate Government as defined under the Industrial Disputes Act and by referring to the said definition, learned Counsel for the petitioner submitted that in respect of the industries mentioned under the provisions of Section 2 Clause (a) of the I.D. Act are the only industries, for which the Central Government is the appropriate Government and in respect of other industries, it is the State Government. In this regard, learned Counsel for the petitioner relied on a judgment reported in *Bijay Cotton Mills Ltd. Vs. Their Workmen and Another*, and submitted that, in the absence of any notification u/s 2(a)(i) of the Industrial Disputes Act making the Central Government the appropriate Government in relation to industrial disputes concerning textile industry, the appropriate Government would be the State Government within whose territories the Textile mill is situated. Referring to the definition of "appropriate Government" under the I.D. Act and referring to the said judgment, learned Counsel for the petitioner submitted that, unless there is a notification u/s 2 Clause (a) Sub-clause (i) of the I.D. Act, declaring that the industry as carried on by or under the authority of the Central Government or specified in this behalf no other industries are covered and for all other industries, it is only the State Government is the appropriate Government and not the Central Government. He submitted that, there is no notification issued in this behalf showing that the Central Government is the appropriate authority for the 6th respondent.

7. He also relied on another decision of the Apex Court reported in *Hindustan Aeronautics Ltd. Vs. The Workmen and Others*, and pointed out that, by amendments made from time to time in the definition of "appropriate Government" in Section 2 Clause (a) Sub-clause (i) of the Act, the statutory corporations and Companies have been included in the definition, and only those industries falling in the definition are alone covered and the Central Government is the appropriate Government. Even if the shares are exclusively owned by the Central Government, such industries will not come under the purview of Central Government. He also submitted that, since the 6th respondent is not notified under the definition of Section 2(a) Clause (i) of the I.D. Act, the Central Government cannot be treated as an appropriate Government for the purpose of the C.L.R.A. Act. He also strongly relied on the decision reported in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, and submitted that the 6th respondent though is the State within the meaning of Article 12, that by itself cannot be held as a factor to decide the Central Government is appropriate Government. It is also submitted that, to hold the Central Government as an appropriate Government in relation to the establishment, the Court must be satisfied that, the particular industry in question is carried on by or under the authority of the Central Government and in this aspect, what is required to be considered is, whether the 6th respondent - industry is really carried on or is under the authority of the

Central Government and without the same is decided, it cannot be said that the Central Government is an appropriate Government for the purpose of C.L.R.A. Act. He also submitted that, holding of all of its shares by the President of India and the Government officials are posted, does not make any difference unless it is proved that the said industry is carried on or is under the authority of the Central Government. He further submitted that the 6th respondent is an industry run by Company and even though the shares are held by the Central Government that by itself does not decide that the industry is carried on by Central Government, unless it is proved that, the Central Government has carried on the industry or is under the authority of the Central Government, it would not be heated as an appropriate Government for the purpose of C.L.R.A. Act or the I.D. Act.

8. Sri. Aravind Kumar, learned Assistant Solicitor General appealing for the Union submitted that, this matter has been set at rest by virtue of a judgment in C.A. No. 3659/2002 decided on 8th July 2002 in the matter of Hindustan Aeronautics Limited and Anr. v. Hindustan Aero Canteen K. Sangh and Ors. and pointed out that, the Apex Court considering the decision of Steel Authority Of India Limited (supra) has held that the Hindustan Aeronautics Limited is an Undertaking of the Central Government and it is the Central Government which exercises full control over the same and the Central Government is the appropriate Government for the purpose of Hindustan Aeronautics Limited. Relying on this judgment, Sri. Aravind Kumar submitted that, as far as H.A.L. is concerned, the question has been settled by the Apex Court by giving a finding that the said industry is Central Government Undertaking and fully under the control of the Central Government. He also pointed out from the judgment of Steel Authority Of India Limited by referring to paras-39 and 119 that, the question as to whether the Central Government is an appropriate authority or not, is the question of fact, which has to be decided based on the evidence. He further submitted that the appropriate Government in relation to the establishment, the Court must satisfy that the industry is carried on by or under the authority of the Central Government and if this aspect is kept in mind, it would be clear that the Central Government will be the appropriate authority under the C.L.R.A. Act and I.D. Act. In this regard, he referred to the judgment of H.A.L. (supra) wherein the Apex court has given a finding that the 6th respondent is fully under the control of the Central Government and the Central Government is the appropriate authority. He also submitted that, what is required to be considered is, as to whether the Government Company/Undertaking concern or any Undertaking concern is carried on by or under the authority of the Central Government. He further submitted that, if the industry is controlled by the Central Government or carried on by the Central Government or if it is specified as controlled industry, for such industry, the Central Government is the only appropriate Government and not the State Government. He also submitted that there is no need to go into the question as to whether the 6th respondent - H.A.L. is controlled by the Central Government or not, as the said issue is now settled by the Apex Court by virtue

of the judgment referred to above. He further submitted that in view of the fact that the appropriate Government has not given licence to the petitioner, the petitioner has violated the provisions of C.L.R.A. Act and Rules made thereunder and prosecution is rightly initiated against the petitioner and further submitted that there is no need to interfere with the proceedings pending on the file of the learned Magistrate.

9. The offence alleged in this case is for violation of the provisions of the C.L.R.A. Act, for not taking licence from the appropriate Government. "Appropriate Government" has been defined u/s 2 Clause (a) of the C.L.R.A. Act. By reading of the said definition, it is clear that, in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, is the appropriate Government. From the reading of the definition of appropriate Government under the I.D. Act, it is clear that industry carried on by or under the authority of the Central Government would fall within the ambit of Central Government and industries, which are specified in this behalf also fall within the ambit of Central government apart from the Railway Companies. The question is, whether the 6th respondent has been specified in this behalf or not, or whether it is controlled or carried on by the Central Government?

10. As far as this aspect is concerned, in S.A.I.L.'s case (supra), the Apex Court in para-39 has held, that instrumentality or agency of Central Government would not by itself amount to having an authority of the Central Government to carry on that particular industry. Therefore, it is required to be considered, as to whether the particular industry in question is carried on by or under the authority of the Central Government? This matter holding of all the shares of the said industry or the Company by the Central Government would not make any difference, unless a finding is arrived as to the 6th respondent is controlled or carried on by the Central Government or is a specified industry as under the definition of "appropriate Government" u/s 2 Clause (a) Sub-clause (i) of the I.D. Act. It is in this regard, it is useful to refer to the decision of the Apex Court in the matter of H.A.L. (supra) itself wherein a finding has been given by the Apex Court inter alia holding that the 6th respondent is an industry controlled by the Central Government. At para-2 of the said judgment, it is observed by the Supreme Court, which reads as under.

It is undisputed that the H.A.L. is an undertaking of the Central Government and it is the Central Government which exercises full control over the same. Issuance of licence by the State is not criteria, State Government would be the appropriate Government.

By the judgment of the Apex Court, it is clear that the 6th respondent is an industry, which is controlled by the Central Government and the Central Government is only the appropriate authority in respect of 6th respondent.

11. Learned Counsel for the petitioner submitted that in the case of S.A.I.L (supra), it has been held that irrespective of whether the entire share capital was

contributed by the Central Government and all the shares were held by the President of India and certain Officers of the Government are exercising power over the said industry will not decide the appropriate Government. He also submitted that in SAIL's case, it is held that the Central Government is not the appropriate authority in respect of the said industry. However, as far as 6th respondent is concerned, the issue has been settled by the decision of the Apex Court. The fact that it has been already held by the Apex Court that it is fully controlled by the Central Government, the Central Government is the only appropriate authority for the purpose of C.L.R.A. Act as well as I.D. Act in respect of 6th respondent.

12. The contention of the petitioner that the 6th respondent has not been notified as an industry carried on or under the authority of Central Government is concerned, the Apex Court has held that the 6th respondent is controlled by the Central Government. Hence, it is the Central Government is the appropriate Government Even if the licence is obtained from the State Government, it will not be a valid licence for engaging the contract labourer under the provisions of C.L.R.A. Act and violation of the provisions of the said Act invites the prosecution, and in these cases, the learned Magistrate has taken cognizance and the only question that is raised in these writ petitions is that, the appropriate Government is the State Government and not the Central Government. In view of the decision in respect of very industry by the Apex Court, this question does not survive for consideration. Hence, I find no reason to interfere with the prosecution initiated against the petitioner.

Accordingly, the writ petitions fail and same are dismissed.