

(1982) 09 KAR CK 0013
In the Karnataka High Court
Case No : W.A. No. 1089 of 1981

Workmen, Karnataka P.F. Employees Union	APPELLANT
Vs	
Additional Industrial Tribunal and Another	RESPONDENT

Date of Decision : 27-09-1982

Acts Referred:

Employees State Insurance Act, 1948 — Section 3
Industrial Disputes Act, 1947 — Section 10, 2 (a), 2 (j)

Citation : (1983) ILR (Kar) 157 : (1983) 1 KarLJ 439 : (1983) 2 LLJ 108

Hon'ble Judges : V.S. Malimath, J;A.K. Laxshmeshwar, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Regional Provident Fund Commissioner, Karnataka Vs. Workmen represented by The General Secretary, Karnataka Provident Fund Employees" Union and Another, AIR 1984 SC 1897 : (1984) 49 FLR 433 : (1984) LabIC 1682 : (1984) 2 LLJ 503 : (1984) 2 SCALE 422 : (1984) 1 SCC 418 Supp : (1984) SCC 418 Supp : (1985) 1 SCR 816 : (1985) 17 UJ 121

Malimath, J.—This appeal is by the Workmen represented by the General Secretary, Karnataka Provident Fund Employees" Union (hereinafter referred to as the "Workmen") challenging the order made by the learned Single Judge in W.P. No. 18987 of 1980.

2. The facts relevant for the disposal of this case may briefly be stated as follows :

The Government of Karnataka has made an order under S. 10, of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) referring certain disputes between the Provident Fund Organisation in the Karnataka Region represented by the Regional Provident Fund Commissioner (hereinafter referred to as the "Management") the appellant-workmen, to the Addl. Industrial Tribunal, Bangalore in A.I.D. No. 3 of 1979. On behalf of the Management, it was contended before the Tribunal that the second party - Management (respondent 2 in this appeal) is not an industry as defined in S. 2(j) of the Act. It was further

contended that the order of reference is without jurisdiction on the ground that it has not been passed by the appropriate Government as defined in S. 2(a) of the Act. The contention of the Management was that the appropriate Government which was competent to refer the dispute under S. 10 of the Act, was the Central Government and not the State Government. In the light of these contentions raised on behalf of the Management, the Tribunal framed additional issues 1 and 5 as preliminary issues and recorded its findings after giving an opportunity to both the parties of putting forth their contentions in this behalf. The two preliminary issues framed by the Tribunal read as follows :

"Additional Issue No. 1 :

"Whether the second party proves that the Government of Karnataka is not the appropriate Government to make the reference in this case and this Tribunal has no jurisdiction to adjudicate upon the dispute raised by the employees of the Employees' Provident Fund Organisation ?"

Additional Issue No. 5 :

"Whether the business of the second party amounts to an industry within the meaning of the definition in S. 2(j) of the Industrial Disputes Act, 1947."

The Tribunal has recorded its findings on both the issues against the Management. It has held that the Management has failed to prove that the State Government was not competent to make the reference on the ground that it is not the appropriate Government to make such a reference. The Tribunal has also held that second party is an Industry as defined in S. 2(j) of the Act.

3. The second respondent Management challenged the aforesaid findings of the Tribunal on the two preliminary issues in W.P. No. 18987 of 1980. The learned Single Judge by order dated 10th March, 1981, allowed the Writ Petition in part. He quashed the findings of the Tribunal on Issue No. 1 and held that the reference made by the State Government is without jurisdiction on the ground that the appropriate Government which was competent to refer the dispute is the Central Government. So far as the finding on additional Issue No. 5 is concerned, it was conceded on behalf of the Management during the course of the arguments that the said findings is not liable to be interfered with having regard to earlier decision of this Court in Registrar of Trade Unions v. Mariswami (1973) 2 Mys. L.J. 256 which, we are informed, stands affirmed by the Supreme Court. As the learned Single Judge came to the conclusion that the reference is without jurisdiction the writ petition was allowed and the reference to the Tribunal was quashed. It is the said order of the learned Single Judge this is challenged by the workmen in this appeal.

4. The only question for consideration in this appeal is as to whether the Central Government is the appropriate Government competent to refer the dispute in question under S. 10 of the Act. S. 10 of the Act empowers appropriate Government to refer an industrial dispute for adjudication before the Labour

Court or the Industrial Tribunal as the case may be. The expression "appropriate Government" used in S. 10(1) of the Act, has been defined in S. 2(a) of the Act and 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 the Industrial Finance Corporation of India, established under S. 3 of the Industrial Finance Corporation Act, 1948, or the Employees' State Insurance Corporation established under S. 3 of the Employees' State Insurance Act, 1948, or the "Indian Airlines" and "Air India" Corporations established under S. 3 of the Air Corporations Act, 1953 or the Life Insurance Corporation of India established under S. 3 of the Life Insurance Corporation Act, 1956, or the Agricultural Refinance Corporation established under S. 3 of the Agricultural Refinance Corporation Act, 1963, or the Deposit Insurance Corporation established under S. 3 of the Deposit Insurance Corporation Act, 1961, or the Unit Trust of India established under S. 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under S. 3, or a Board of Management established for two or more contiguous States under S. 16, of the Food Corporations Act, 1964, or a banking or an insurance Company, a mine an oilfield, a Cantonment Board, or a major port, the Central Government and

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

5. On a consideration of the relevant provisions of the Act and the scheme made thereunder the learned Single Judge has held :

"In fine, the authority of the Central Government is the warp and woof in the fabric of the Provident Fund Act and the Schemes thereunder and the Commissioner, carries on his calling or service under its authority as an instrumentality or agency of Government".

The learned Single Judge has held that the Regional Provident Fund Commissioner is a servant of the Central Government performing Government functions.

6. The Provident Fund Organisation represented by the Regional Provident Fund Commissioner in the Karnataka Region, the Management, it is contended by Shri Swethadri, learned Counsel for the appellant, is an industry which is not carried on by under the authority of the Central Government in which event alone the Central Government would be the appropriate Government competent to make the reference under S. 10 of the Act. On the other hand, Shri Shivashankar Bhat, learned Senior Standing Counsel for the Central Government, contended that the Provident Fund Organisation represented by the Regional Provident Fund Commissioner, is an industry carried on by the Central Government itself. At any

rate, he contended that it is an industry carried on under the authority of the Central Government. Hence it was submitted that the appropriate Government, as rightly held by the learned Single Judge, is the Central Government which had the necessary competence to refer to the dispute under S. 10 of the Act.

7. Whether the industry in question is carried on by the Central Government or under the authority of the Central Government has to be ascertained having regard to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the provisions of the Scheme framed thereunder as the Provident Fund Organisation which is admittedly an industry has been constituted under the said provisions.

8. Shri Swethadri, learned Counsel for the appellant, contended that the answer to the question for consideration has to be ascertained in the light of the law laid down by the Supreme Court in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, The learned Single Judge has recorded a finding against the appellant applying the very principle laid down by the Supreme Court in the decision relied on by Shri Swethadri. Hence, it is necessary to understand what has been laid down by the Supreme Court in the aforesaid decision. In the case dealt with by the Supreme Court, the State Government of Bihar had referred the dispute under S. 10 of the Act between the Heavy Engineering Corporation, a company incorporated under the Companies Act, 1956 and its workmen. In that case, the workmen took the stand that the State Government of Bihar had no competence to make the reference and that the appropriate Government which had the necessary competence to make the reference was only the Central Government. The High court of Patna having overruled the contentions of the workmen, the decision of the High Court was challenged before the Supreme Court. The Supreme Court dismissed the appeal agreeing with the view taken by the High Court that the appropriate Government competent to make the reference as the State Government of Bihar. The industry that was examined in that case, as already stated, was the Heavy Engineering Corporation Ltd. Ranchi, a company incorporated under the Companies Act. The entire share capital of that company was contributed by the Central Government and all its share were held in the name of the President of India and certain officer of the Central Government. The said company answered the definition of a Government Company within the meaning of S. 617 of the Companies Act. The Memorandum of Association and the Article of Association of the company conferred large powers on the Central Government including the power to give directions as regards the functioning of the company. The power to determine the wages and the salaries of the directors of the company vested in the President. The Standing Orders of the company have described it as a Government undertaking. It is in the light of these features of the said industry that the Supreme Court examined the question as to whether the same can be regarded as an industry carried on by or under the authority of the Central Government, in which event alone the Central Government would be competent to make a reference under S. 10 of the Act. As the Heavy Engineering Company Ltd., was a company

incorporated under the Companies Act, their Lordships came to the conclusion that the undertaking is not one carried on directly by the Central Government or by any one of its departments as in the case of Posts and Telegraphs or the Railways. It is after recording this finding that the Supreme Court proceeded to examine as to whether the industry can be regarded as one carried on "under the authority" of the Central Government. Their Lordships held that the expression "under the authority" means pursuant to the authority such as where an agent of servant acts under or pursuant to the authority of his principle or master. Their Lordships held that a company incorporated under the Companies Act, whose constitution, powers and functions are provided for and regulated by its Memorandum of Association and Article of Association has a separate existence and the law recognises it as a juristic person separate and distinct from its members, which personality emerges from the moment of its incorporation and than from that date the person subscribing to its Memorandum of Association and others joining it as members are regarded as a body corporate or a corporation aggregated and the new person begins to function as an entity. As the Company to incorporated derives its powers and functions from and by virtue of its Memorandum of Association and its Articles of Association, it was held that the mere fact the entire share capital of the company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. Their Lordships further pointed out that the fact that the Central Government has extensive powers conferred on it in the matter of giving directions as to how the company should function and in the matter of appointment of directors, and in the matter of determining the scale of wages or salaries payable to the employees are powers which are derived not from the Central Government, but from the Company's Memorandum of Association and Article of Association. That being a the position, the Supreme Court pointed out that the company cannot be regarded as an agent of the Central Government. Though it may be possible for the statute setting up the Corporation to constitute the Corporation as its agent, their Lordships came to the conclusion that no such agency has been constituted by any statute. Their Lordships further pointed out that in the absence of a statutory provisions creating it as an agent of the Central Government, a commercial corporation acting on its own behalf, even though it was controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. It was pointed out that the fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. Their Lordships further pointed out that such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance government and not commercial functions. It is in the light of this elucidation made by the Supreme Court that we shall not proceed to examine the relevant provisions of there Employees" Provident Funds and Miscellaneous Provisions Act, 1952 and

the scheme framed thereunder.

9. The preamble to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the "P.F. Act") states that this is an Act to provide for the institution of provident funds for employees in factories and other establishments. S. 5 of the Act empowers the Central Government to frame a Scheme called the Employee's Provident Fund Scheme for the establishment of provident funds under the Act for the employees. As provided in sub-section (1-A) of S. 5, the Fund vests in the Central Board constituted under S. 5-A. S. 5-A provides for the constitution of the Central Board. It empowers the Central Government to constitute the Board consisting of the persons specified in the said provision. The terms and conditions of appointment of the members of the Board shall be such as may be provided for in the Scheme. Sub-section (3) of S. 5-A provides that the Central Government shall, subject to the provisions of S. 6-A and S. 6-C administer the fund vested in it in such manner as may be specified in the Scheme. The Central Government is required to perform such other functions as it may be required to perform by or under any provisions of the Scheme and Family Insurance Scheme. S. 5-B provides for constitution of a Board of Trustees for a particular State. S. 5-C provides that the Board of Trustees constituted under S. 5-A or 5-B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue or be used. S. 5-D empowers the Central Government to appoint the Central Provident Fund Commissioner who is the Chief Executive Officer of the Central Board and he is required to function subject to the general control and superintendence of that Board. The Central Government is also empowered to appoint as many Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners and other officers whose maximum monthly salary is not less than five hundred rupees as it may consider necessary to assist the Central Provident Fund Commissioner in the discharge of his duties. The Central Board is empowered to appoint such other officers and employees as it may consider necessary for the efficient administration of the Scheme, the Family Pension Scheme and the Insurance Scheme. The Union Public Service Commission is required to be consulted before making appointments to important posts like Central Provident Fund Commissioner, the Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or any other post under the Board carrying a maximum monthly salary of not less than five hundred rupees. Sub-section (6) of S. 5-D provides that the method of recruitment, salary and allowance, discipline and other conditions of service of the Central Provident Fund Commissioner, Deputy Provident Fund Commissioner and Regional Provident Fund Commissioner shall be such as may be specified by the Central Government and such salary and allowance shall be paid out of the Fund. Sub-section (7) of S. 5-D provides that the method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employees of the Central Board shall be such as may be specified by the Central Board with the approval of the Central Government. Recruitment and conditions

of service of the employee of the State Board are required to be made by the State Board with the approval of the concerned State Government. S. 6 prescribes the contribution to be paid by the employer and the employee to the Fund and to make appropriate provisions in that behalf in the Scheme. S. 6-A empowers the Central Government to frame a scheme called the Employees' Family Pension Scheme for providing family pension and life insurance benefits to the employees. S. 6-B provides that the Central Government shall after due appropriation made by the law in this behalf, pay such further sums as may be determined by it into the Family Pension Fund to meet all the expenses in connection with the administration of the Family Pension Scheme other than the expenses towards the cost of any benefits provided by or under the said Scheme. S. 6-C empowers the Central Government to frame a Scheme providing an Employee's Deposit-linked Insurance Scheme. Sub-section (3) of S. 6-C provides that the Central Government shall, after due appropriation made by Parliament by law, contribute to the Insurance Fund in relation to each employee, of any establishment or class or establishments to which this Act applies, an amount representing one-half of the contribution which an employer is required by sub-s (2), to make. S. 7-A empowers the Central Provident Fund Commissioner and other to determine the amount due from the employer under the P.F. Act or the relevant Scheme. S. 8 prescribes the mode of recovery of money due from the employer. S. 8-A provides for recovery of moneys by employer and contractors. Ss. 14, 14-A, 14-AA, 14-AB and 14-AC deal with imposition of penalties in respect of certain omission and commissions and other allied matters. S. 14-B empowers the recovery of damages where an employer makes default in the payment of contribution to the appropriate fund. S. 16 specifies the establishments to which the P.F. Act does not apply. S. 17 empowers the appropriate Government to exempt from the operation of all or any of the provisions of any Scheme, any establishment to which P.F. Act applies. S. 19-A provides for removal of difficulties if any difficulty arises in giving effect to the provision of the P.F. Act. The said power has been conferred on the Central Government.

10. In exercise of the power conferred by Section 5, the Employees' Provident Fund Scheme, 1952, has been framed by the Central Government for the establishment of provident funds under the P.F. Act for the employees of certain classes of establishment to which the Scheme has been made applicable. Detailed provisions have been made in the said Scheme for the effective implementation of the provisions of the P.F. Act in the matter of providing the benefit of provident fund to the employees of certain classes of establishment. Chapter II of the Schedule deals with the Board of Trustees. Chapter III deals with appointment, and powers of the Commissioner and other staff of Board of Trustees. Chapter IV deals with appointment and powers of the Commissioner and other staff of Board of Trustees. Chapter IV deals with the membership of the Fund, Chapter V deals with the contributions, Chapter VI deals with the declaration, contribution cards and returns and Chapter VII deals with the

administration of the fund, Accounts and Audit. Chapter VIII of the Scheme deals with nominations, payment and withdrawal from the Fund and Chapter IX contains miscellaneous provisions.

11. Shri Shivashankar Bhat, learned Senior Standing Counsel appearing for respondent 2 invited our attention to paragraph 78 of the Scheme in Chapter IX which empowers the Central Government to issue direction. It provides that the Central Government may from time to time, issue such directions to State Governments, the Central Board or any other authority, under this Act or Scheme as it may consider necessary for the proper implementation of the Scheme or for the purpose of removing any difficulty which may arise in the administration thereof including difficulties in the matter of the payment of accumulations in the Fund to the members after they cease to be such members. It further provides that the authority to whom any directions are issued shall comply with such directions.

12. In exercise of the power conferred by Section 6-A of the P.F. Act, Employees' Family Pension Scheme, 1971 has been framed which contains detailed provisions in regard to providing family pension and life insurance benefits to employees of certain establishments. In exercise of the power conferred by Section 6-C, the Central Government has framed the Employee's Deposit-linked, Insurance Scheme, 1976 for the purpose of the providing life insurance benefit to the employees of certain establishments.

13. We are principally concerned in this case with the Provident Fund Organisation which is charged with the responsibility of carrying out the purposes of the P.F. Act and the Scheme framed u/s 5 in the matter of providing benefit of provident fund to employees of certain establishment. This Court, on a detained consideration of the provisions of the P.F. Act and the Scheme framed u/s 5 thereof, has held in *The Registrar of Trade Unions in Mysore v. M. Mariswamy* (supra) that the activity of the Provident Fund Organisation is really a part of the activity of the industries and others establishment similar to them. It has been held that it is one of the social security programmes for the establishment to which the Act applies and it is a measure to give financial security to its employees. This Court has observed in the said decision that the Provident Fund Organisation which enforces the scheme, in reality and in substance, discharges a part of the function of the employers themselves. In other words, the activity of the Provident Fund Organisation is really a part of the activity of the industry and other establishments similar to them to which the P.F. Act applies.

14. The examination of the object, the relevant provisions of the P.F. Act and the Scheme framed u/s 5 show that the following are the main features of the Provident Fund Organisation :

(1) that the activity of the Provident Fund Organisation is really a part of the activity of the industries and other establishments similar to them to which the P.F. Act applies;

- (2) that it is a social security programme for the benefit of the employees of the industries and other establishments for the purpose of giving financial security to their employees;
- (3) that the object of providing financial security by giving provident fund benefit to the employees of the industries is statutory regulated;
- (4) that the power of framing the Scheme for giving effect to the provisions of the P.F. Act has been conferred on the Central Government;
- (5) that it is the Central Government that has been empowered to constitute the Board of Trustees for administering the provident fund;
- (6) that the power of appointment of certain Officers of the Provident Fund Organisation is conferred on the Central Government;
- (7) that the contributions to the provident fund are to be made by the employer and the employee;
- (8) that the failure to comply with the provision of the P.F. Act and the Scheme made thereunder is made an offence punishable under the said Act;
- (9) that the provident fund vests in and is required to be administered by the Board of Trustees;
- (10) that the Board of Trustees shall be a body-corporate having perpetual succession and a common seal; and
- (11) that the Central Government has been given the power not only of appointing the Board of Trustees but also in the matter of giving certain directions in regard to the discharge of certain functions by the Board of Trustees and in the matter of appointment of Officers of the Provident Fund Organisation.

15. The activity of the Provident Fund Organisation is essentially non-governmental in character as it is one of the activities of the industries that has been entrusted to the Board of Trustees and hence, the activity of the Provident Fund Organisation is one of the activities of the commercial organisation, namely, the industries to which the P.F. Act applies. The activity of the Provident Fund Organisation is not carried on directly by the Central Government or by any one of its departments, but is carried on by a Board of Trustees constituted under the P.F. Act. As the functions are entrusted to the Board of Trustees constituted under the P.F. Act and as the same is incorporated as provided by Section 5-C of the said Act, it cannot be said that its activities are carried on by the Central Government or any one of its departments as in the case of P & T or Railways. Though powers have been conferred on the Central Government in the matter of appointing the Board of Trustees, giving certain directions to it and in the matter of appointment of officers of the Organisation, it is obvious that all these powers are derived not from the Central Government but from the provisions of the P.F. Act and the Scheme framed thereunder. The P.F. Act itself has not constituted the Provident Fund Organisation as the agent to carry out some of the purposes of

the Central Government. It is also not the case of respondent No. 2 that the Statute has brought an agency. An examination of the entire object and the nature of the activities of the Organisation shows that the activities of the Provident Fund Organisation are not governmental in character as they are essentially part of the activities of various industries to which the P.F. Act. applies. We have therefore no hesitation in holding that the Provident Fund Organisation, though admittedly an industry, is not carried on by or under the authority of the Central Government. That being the position, it follows that the appropriate Government empowered to make a reference to refer the dispute u/s 10 in this case is not the Central Government but the State Government of Karnataka.

16. Shri Shivashankar Bhat, learned senior Standing Counsel for the respondent 2 however contended that in the light of the decision of this Court in A.C. Shive Gowda, etc., etc. Vs. Coffee Board and Others, etc., etc., the appropriate Government is the Central Government and not the State Government. In Shivegowda's case a Division Bench of this court has held that Section 32(iv) of the Payment of Bonus Act, 1965, is applicable to the employees of the Coffee Board constituted under the Coffee Act. Section 32(iv) of the said Act provides that nothing in that Act shall apply to employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority. On an examination of the object and the provisions of the Coffee Act it was held in Shivegowda's case that the Coffee Board answers, the definition of the expression "State" occurring in Art. 12 of the Constitution, on the grounds that it is an agency of the Central Government. As the coffee Board is thus an agency of the Central Government. As the Coffee Board is thus an agency of the Central Government, it was held that the provisions of Section 32(iv) of the Payment of Bonus Act are attracted. As there is a direct decision of the Supreme Court considering the definition of the expression "appropriate" Government occurring in Section 2(a) of the Act, rendered in Heavy Engineering Mazdoor Union's case (supra) it is neither necessary nor proper for us to attempt to apply the principles laid down by this court in Sivegowda's case which has considered the provisions of Section 32(iv) of the Payment of Bonus Act, 1965. The organisation or undertaking which is "State" for the purpose of Part III of the Constitution may or may not be an industry carried on by or under the authority of the Central Government. That depends upon the facts of each case. Art. 12 of the Constitution itself in express terms states that the definition of the expression "State" is applicable only for the purpose of Part III of the Constitution. What is State for the purpose of Part III need not necessarily be State for other Parts of the Constitution such as Art. 311. Dealing with the Heavy Engineering Mazdoor Union's case, the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, has observed in para 30 at page 1235 of the said decision as follows :

"29. The second decision to which we must refer is that in Heavy Engineering

Mazdoor Union Vs. State of Bihar and Others, The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Ltd. (hereinafter referred to as the "Corporation") and the Union made by the State of Bihar u/s 10 of the "Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was "carried on under the authority of the Central Government" and the reference could, therefore, be made only by the Central Government. The Court held that the words "under the authority, 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" and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously "no", because the Corporation was carrying on business in virtue of the authority derived from its Memorandum of Article of Association and not by reason of any authority granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore not a servant or agent of the Central Government in the sense that its actions would bind the Central Government. There was no question in this case whether the Corporation was an instrumentality of the Central Government and therefore an "authority" within the meaning of Article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action. This decision dealing with an altogether different point has no bearing on the present issue."

17. This decision fully supports our view that merely because a particular organisation is an instrumentality of the State and therefore answers the definition of the expression "State" under Art. 12 of the Constitution, it cannot be said that it is an industry carried on by or under the authority of the Central Government for the purpose of the Act in question. The observations of the Supreme Court make it clear that the question as to whether a particular industry is carried on by or under the authority of the Central Government has to be determined by examining the relevant facts.

18. Shri Swethadri, learned Counsel for the appellant also invited our attention to the decision of the Supreme Court in *Som Prakash Rekhi v. Union of India* . That is a case in which the Supreme Court examined the question as to whether Bharat Petroleum Corporation Ltd., is "State" within the meaning of Art. 12 of the Constitution. In para 38 of the said judgment, the Supreme Court has extracted the relevant observations made in *Ramana Dayaram Shetty Vs.*

International Airport Authority of India and Others, as follows :

"38. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action."

It is thus clear that the Supreme Court has emphasized again and again that for the purpose of the definition of the expression "State" occurring in Art. 12 of the Constitution, what is relevant to examine is as to whether a particular organisation is an instrumentality of the State in the sense that a part of the governing power of the State is located in the Corporation and the question of such an organisation being an agent of the Government in the ordinary sense really does not arise. That being the clearly enunciation of the Supreme Court, we are of the opinion that the principle laid down by the Supreme Court for the purpose of determining as to whether a particular organisation is a "State" as defined under Art. 12 of the Constitution cannot be applied for the purpose of determining as to whether such an organisation is an industry carried on by or under the authority of the Central Government. It is not possible to accede to the contention of Shri Shivashankar Bhat that we should apply the principle laid down in Shivegowda's case (supra). We say so for two reasons. First that decision does not deal with the expression "appropriate Government" occurring in Section 2(a) of the Act, but deals with Section 32(iv) of the Payment of Bonus Act, 1965. Secondly, in Shivegowda's case, reliance is placed on the principle laid down by the Supreme Court in several decisions for determining whether a particular organisation is a State as defined under Art. 12 of the Constitution, and in our opinion, those decisions are not relevant for the purpose of determining as to whether a particular industry is one carried on under the authority of the Central Government.

19. It is also not possible to agree with the view taken by the learned single Judge that the 2nd respondent is a servant of the Central Government and therefore an industry carried on under the authority of the Central Government as explained by the Supreme Court in Heavy Engineering Mazdoor Union's case (supra). It is no doubt true that sub-section (2) of Section 5-D has empowered the Central Government to appoint, among others, Regional Provident Fund Commissioners. Sub-section (6) of Section 5-D further provides that the method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, and Regional Provident Fund Commissioner shall be such as may be specified by the Central Government and such salary and allowances shall be

paid out of the fund. These provisions no doubt indicate that the power of appointment of the Regional Provident Fund Commissioner vests with the Central Government and his conditions of service are also regulated by the Central Government. The industry in question is the Provident Fund Organisation which is a trust constituted u/s 5-A of the Provident Fund Act. Several officers of that organisation are required to be appointed for the purpose of administering the provident fund. So far as the particular region is concerned the administrative head is the Regional Provident Fund Commissioner. He is an officer who discharges administrative functions of the fund which is a body corporate constituted u/s 5-C. What has to be examined is as to whether the industry, e.g., the Provident Fund Organisation is a servant or agent of the Central Government. The Regional Provident Fund Commissioner cannot be equated with the activity of the Provident Fund Organisation. He is only an officer discharging certain functions in the matter of administering the fund constituted under the Provident Fund Act. It is nobody's case that the Provident Fund Organisation is the servant of the Central Government. Merely because some of the officers of the said organisation are appointed by the Central Government, the organisation itself cannot be treated as the servant of the Central Government. It is therefore not possible to agree with the view taken by the learned Single Judge that respondent No. 2 is an industry carried on under the authority of the Central Government on the ground that the Regional Provident Fund Commissioner is appointed by the Central Government.

20. On an examination of the provisions of the Provident Fund Act and the Scheme framed thereunder, we have come to the conclusion that the Provident Fund Organisation is neither a servant nor an agent of the Central Government. We have also held that it cannot be regarded as carrying on any "Governmental functions". We have also held that the industry is not carried on by the Central government or through one of its department. That being the position, the Provident Fund Organisation cannot be regarded as an industry carried on by or under the authority of the Central Government. Hence, we have no hesitation in holding that the Central Government is not the "appropriate Government" as defined u/s 2(a) of the Act empowered to refer the dispute u/s 10.

21. For the reasons stated above, this appeal is allowed, the order of the learned Single Judge is set aside and the writ petition of the 2nd respondent is dismissed. The appellant is entitled to costs from the 2nd respondent. Advocate's fee is Rs. 250/-.

22. In our opinion, no substantial question of general importance which needs to be decided by the Supreme Court arises for consideration in this case as all that we have done is to apply the principles laid down by the Supreme Court in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, case. Hence, we do not think that this is a fit case for grant of leave to appeal to the Supreme Court. Leave prayed for is therefore refused. No stay.