

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4669 of 2004**

South Eastern Coal Field Limited

---- **Petitioner****Versus**

State of Chhattisgarh & Others

---- **Respondents**

For Petitioner	:	Dr. Nirmal Shukla, Sr. Advocate along with Shri Manoj Yadav, Advocates
For Respondent/State	:	Shri B. Gopa Kumar, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/09/2015**

Challenge to the present writ petition is Annexure P-1 which is a notice issued by the Assistant Labour Commissioner, Korba dated 16.11.2004 directing the petitioner establishment for initiating prosecution proceedings under the provisions of Equal Remuneration Act, 1976 (for short 'the Act').

2. Learned counsel for the petitioner submits that the Labour Inspector under the office of Assistant Labour Commissioner, Govt. of CG, Korba had inspected the petitioner's establishment under the Equal Remuneration Act and submitted a report to the Commissioner based upon which the prosecution proceedings were initiated.

3. Counsel for the Petitioner submits that the impugned notice Annexure P-1 dated 16.11.2004 itself is not maintainable for the reason that the State Gov. is not competent and the Appropriate Government to initiate proceedings under the Equal Remuneration Act so far as the petitioner establishment is concerned. He submits that the petitioner establishment is a Central Government Public Sector Undertaking and its

100% shares are in the name of the President of India and its Chairman and Directors are all appointed by the President of India. He submits that it is the Central Government which has the entire control over the Administration of the petitioner establishment and that the petitioner establishment is directly managed and operated under the instructions issued by the Central Government, Ministry of Coal and as such, for all practical purposes, it is the Central Government or the Authority notified by it who is competent to inspect the petitioner's Establishment under the Equal Remuneration Act.

4. Counsel for the petitioner submits that the Central Government has already exercising its power under Section 7 of the Act appointed the Regional Labour Commissioner (Central), Jabalpur to be the officer authorized for the purpose of initiating proceedings under the Equal Remuneration Act and as such the Assistant Labour Commissioner, Korba is not the competent authority to inspect, therefore, the impugned order is per se illegal and liable to be struck down. In support of his contention counsel for the petitioner placed his reliance upon the decision rendered by the Supreme Court in the case of **Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and Others** reported in **(2001) 7 SCC 1**.

5. State counsel however, opposing the writ petition submits that the State Assistant Labour Commissioner is in fact competent to initiate proceedings under the Equal Remuneration Act for the reason that the petitioner establishment where the inspection was conducted falls under the jurisdiction of the Assistant Commissioner, Korba and that only because the petitioner establishment is a Central Government Public Sector Undertaking by itself would not bring it within the ambit of the Central Government being the appropriate Government. Counsel for the

State also relies upon the averments made in the judgment of Steel Authority of India (Supra) and submits that only because it is Central Government Public Sector Undertaking by itself would not exclude the authority of the State Government being the appropriate Government. Thus, counsel for the State prayed for rejection of the writ petition.

6. Considering the submissions put forth by the counsel appearing on either side, a perusal of the definition of “appropriate Government” under the Equal Remuneration Act, 1976 would reveal as under:

2 (a) “Appropriate Government” means,-

- (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and
- (ii) in relation to any other employment, the State Government;

7. A plain perusal of the above referred provision of law itself clearly envisages the fact that, what is to be looked for deciding who is the appropriate Government is whether the department is that of the Central Government or not, whether the establishment is an establishment under any of the Central Act or not and lastly whether the said establishment and employment in the said establishment is being carried on by or under the authority and control of the Central Government.

8. If we put the three above referred conditions to test, it can be safely and undisputedly said that firstly the 100% shares of the petitioner's establishment are in the name of the President of India, secondly the petitioner's establishment being an establishment directly under the Ministry of Coal, Central Government and lastly the petitioner establishment and its working are directly under the control of the Central

Government which by itself would force us to conclude that the petitioner establishment meets all the requirement as is required under Section 2 (a) of the Act for the appropriate Government to be the Central Government. The Supreme Court in the case of **Hindustan Aeronautics Ltd. & Anr. Vs. Hindustan Aero. Canteen K. Sangh & Ors. reported in 2002 (5) SCALE** has dealt with the similar situation though under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and categorically relying upon the decision of the Steel Authority of India Ltd. (Supra) has held as under:

“3. The question that arises for consideration in this case is, whether the High Court was justified in holding that the State Government is the “Appropriate Government” under the provisions of the relevant Act. The Constitution Bench recently has considered the relevant provisions of the Contract Labour Regulation Act in the case of Steel Authority of India & Ors. v. National Union Waterfront Workers & Ors. [(2001) 7 SCC1] and has come to the conclusion that the “Appropriate Government” will be the Government which exercises control and authority over the concerned organization. It is undisputed that the Hindustan Aeronautics Ltd. 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 Government is no criteria to come to a conclusion that the State Government would be the “Appropriate Government”. The impugned judgment of the High Court therefore is, on the face of it, erroneous in view of the Constitution Bench decision of this Court referred to earlier. We, therefore, set aside the impugned judgment of the High Court and hold that the Central Government is the “Appropriate Government.”

9. If we peruse the judgment of Steel Authority of India (Supra), even in the said judgment also, in Paragraphs-38 & 39, the Supreme Court in very categorical terms has held as under:

“38....Take the case of a State Government corporation/company/undertaking set up and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry, can it be said that the appropriate Government is the Central Government? We think the answer must be in the negative.....In our view, the same reasoning applies to a Central Government undertaking as well. Further, the definition of “establishment” in the CLRA Act takes

in its fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case, how is “appropriate Government” determined for the purposes of the CLRA Act or the Industrial Disputes Act? In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the Central Government. Obviously, there cannot be one test for one part of the definition of “establishment” and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of the Government is carrying on an industry under the authority of the Central Government and not whether the undertaking is an instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of the Central Government or the State Government.

39....Therefore, it will be incorrect to say that in relation to any establishment of a Central Government company/undertaking, the appropriate Government will be the Central Government. To hold that the Central Government is ‘the appropriate Government’ in relation to an establishment, the court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the “appropriate Government” under the CLRA Act and the ID Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government.”

10. For the purpose of taking assistance of the judgment of Steel Authority of India (Supra) and Hindustan Aeronautics Ltd. (Supra) when we see the definition of Appropriate Government in the Contract Labour (Regulation and Abolition) Act, 1970, the definition of Appropriate Government is what is defined under the Industrial Dispute Act, 1947 and the Appropriate Government as defined under the Industrial Dispute Act, 1947 is the same definition what has been defined under the provisions of Equal Remuneration Act, 1976, the relevant Act in the present writ petition.

11. So far as the petitioner's establishment is concerned, it meets all the requirement as is required under Section 2(a) of the Act for the Central Government to be the appropriate Government.

12. Considering the above given legal positions and pronouncements rendered by the Supreme Court in the case of Steel Authority of India (Supra) and Hindustan Aeronautics Ltd.(Supra), this Court does not have any hesitation in holding that so far as the petitioner establishment is concerned, the appropriate Government would be the Central Government. Moreover, the State neither in their reply nor during the submission have been able to bring out any such substance material or contention both orally as well as documentary by which it could be said that the State Government would be the Appropriate Government so far as the petitioner's establishment is concerned.

13. For the said reasons, the impugned order dated 16.11.2004 Annexure P-1 is without any authority of law, jurisdiction and competence and the same deserves to be and is accordingly quashed.

14. Consequently, the instant writ petition is accordingly allowed.

Sd/-
(P. Sam Koshy)
JUDGE