IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.415 OF 2016
WITH
WRIT PETITION NO.425 OF 2016

Institute of Design of Electrical Measuring
Instruments, Swatantrayaveer Tatya Tope
Marg, Chunabhatti, Sion P.O.
Mumbai-400 022 .. Petitioner

Versus

Kamgar Utkarsha Sabha
Smt. Rama Gulab Joshi Niwas,
Parleshwar Marg,
Vile Parle (East), Mumbai-400 057. .. Respondent

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Mr. V.P. Vaidya i/b Mr. M.M. Agavekar for the Petitioner.
Mr. Pradyumna M. Mokashi for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 20 APRIL 2016.

(Oral Judgement)

. Heard Learned Counsel for the parties. **Rule**. By consent the Petition is taken up for hearing forthwith.

2 This Writ Petition challenges a common order passed by the Industrial Court at Mumbai on several complaints under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act"). The order was on a preliminary issue as to whether the Central Government is the appropriate government in relation to any industrial dispute concerning the Petitioner under the Industrial Disputes Act, 1947 ("ID Act"). If any establishment is not an industry, concerning which the appropriate government is the Central Government

under the ID Act, the provisions of MRTU & PULP Act, do not apply to such establishment.

3 The autonomous body, with whom we are concerned in the present case, is the Institute for Design of Electrical Measuring Instruments, Mumbai, which is the Petitioner before this Court. It is the case of the Petitioner that under the amended definition of the "appropriate government" under the ID Act, the Institute being an autonomous body owned or controlled by the Central Government, the Central Government is the appropriate government with respect to the Petitioner, for any industrial dispute arising under that Act. On the basis of this submission, the Petitioner objected to the jurisdiction of the State Industrial Court to entertain the complaints under the MRTU & PULP Act against it. A preliminary issue was accordingly framed as to whether the Central Government is the appropriate government with respect to the Petitioner-Institute. Evidence was led by both parties on the preliminary issue. By its impugned order dated 18 December 2015, the Industrial Court answered the preliminary issue in the negative, thereby upholding the jurisdiction of the State Industrial Court to entertain an application against the Petitioner Institute under the MRTU & PULP Act.

4 In its impugned order, the Industrial Court basically came to a conclusion that the appropriate government with reference to the Petitioner-Institute was the State Government and not the Central Government. The Industrial Court came to this conclusion after considering the Memorandum of Association of the Petitioner-Institute for management of the Institute including provisions as to its Governing Council, control of its finances and their Audits and also the service

conditions of its employees. What is mainly considered by the Industrial Court to arrive at its conclusion that the Petitioner-Institute is not owned or controlled by the Central Government is that the Central Government was not the drawing or disbursing authority for payment of wages to the Petitioner-Institute's workers. The Industrial Court found that the Central Government had not provided even the grant in aid to the Petitioner-Institute for disbursing any wages.

5 At the hearing of the Petition, Learned Counsel for the Petitioner submits that considering the provisions of the Memorandum of Association of the Petitioner-Institute, as also considering the fact that the Petitioner-Institute has been notified by the Central Government under Section 14 (3) of the Administrative Tribunals Act, 1985 as a local or other authority or society controlled by the Central Government, at least this much is clear that the Petitioner-Institute is controlled by the Central Government. Learned Counsel, relying on the judgment in the case of **Administrative Officer, Central Electro Chemical Research Institute Vs. State of Tamil Nadu**[1], submits that the notification issued under Section 14 (3) of the Administrative Tribunals Act, 1985 is determinative of the fact that the appropriate government in respect of such notified bodies, is the Central Government.

6 On the other hand, it is submitted by Learned Counsel for the Respondent that the notification under Section 14 (3) of the Administrative Tribunals Act, 1985, is not *per se* decisive of the issue, as to whether or not the relevant body is owned or controlled by the Central Government within the meaning of the definition of the appropriate government under

1 1990 LAB.I.C. 1815.

Section 2(a) of the ID Act. It is submitted that evidence on record clearly shows that the Central Government does not have any deep or pervasive control or even a functional control over the Petitioner-Institute. It is submitted that at the best the Central Government has a regulatory control over the Petitioner-Institute, Ministry of Micro, Small and Medium Enterprises, Government of India being the administrative ministry of the Petitioner-Institute. It is submitted that the Central Government does not offer any grant to the Institute; that the expenses of the Institute are borne from funds raised by the business of the Institute; and that even the wages paid to its employees as also the expenses for its administration and business are funded by the Institute. It is submitted that there is no financial control exercised by the Central Government in respect of the affairs of the Petitioner-Institute.

7 In the first place, considering the definition of the appropriate government in the two enactments, namely, the Administrative Tribunals Act, 1985 and the Industrial Disputes Act, 1947, which are *pari materia* in the relevant context, and particularly, the words “society owned or controlled by the Government” used in both the definitions, the fact that by a Central Notification, which is issued under Section 14(3) of the Administrative Tribunals Act, 1985 only in respect of bodies or societies owned or controlled by the Central Government, the Petitioner-Institute is notified by the Central Government is at least a strong piece of evidence, if not anything else, to show that the Petitioner-Institute is controlled by the Central Government. But quite apart from this evidence, the existence of which would normally throw the burden on the other side to show otherwise, there is also the evidence in the form of the Memorandum of Association, Rules and Regulations of the Petitioner-Institute that it is

clearly controlled by the Central Government. In the first place, the Rules and Regulations of the institute are issued by the Ministry of Industrial Development, Internal Trade & Company Affairs (Department of Industrial Development), Government of India. The Rules provide for composition of the Society with the following members, namely, “President”, who is nominated by the Government of India from amongst the members of the Society, “members of the Governing Council”, all of whom are appointed by the Government of India from various categories mentioned therein and “any other person or persons” appointed by the Government of India. That means every member of the Society is a Central Government appointee. The Governing Council of the Petitioner-Institute is also appointed by the Government of India and acts in accordance *inter alia* with orders/directives received from the Government of India from time to time. The Government of India is empowered to terminate the membership of any member or at one and the same time of all members other than the ex-officio members of the Governing Council and to fill in such vacancies after such termination. Notwithstanding anything contained in any of these Rules and Regulations, the Government of India has the power to issue such directives or instructions as it may think fit in regard to the finances and conduct of business and affairs of the Society and the members of the Governing Council are bound to comply with, and give effect to, such directives or instructions. The Governing Council has control over the management of the affairs and funds of the society and has authority to exercise all the powers of the society subject to such limitations in respect of the expenditure as the Government of India may from time to time impose. The accounts of the Society are audited annually the Auditors appointed by the Government of India. The Auditors appointed in connection with the audit of the accounts of the Society have the same rights, privileges and authorities as the Controller & Auditor General has in connection with the audit of Government Accounts. None of the Rules and Regulations of the Society can be amended, except after obtaining an appropriate sanction of the Government of India. The Society cannot be dissolved without the consent of the Government of India. All these are clear indications that the Government of India exercises a complete financial and administrative control, in addition to regulatory control, over the affairs of the Petitioner-Institute.

8 Unfortunately, none of these ingredients has been considered by the Industrial Court in its impugned order. In the impugned order, the Industrial Court rather goes by lack of documentary evidence to show in what manner the Government of India actually exercised control over the Institute. It also goes by some other indices such as salaries of employees of the Society and its expenses being made through its own funds. It is not the sole characteristic of a society owned or controlled by the Central Government that the Government must actually fund its activities including disbursement of salary to its employees out of government funds or extend any government aid. It may well be that the society or establishment generates its own income and funds its activities and pays salaries to its employees from such income. The issue as regards the notification issued by the Central Government in respect of the Petitioner-Institute under Section 14(3) of the Administrative Tribunals Act has been perfunctorily dealt with by the Industrial Court by observing that merely the name of the Petitioner-Institute is shown in the list of autonomous corporations or societies in the notification dated 25 October 2007 No.GI.PER and TRG., Notification NOTEN-P-13030/1/2007 AT.

9 In the premises, the impugned order dated 18 December 2015 of the Industrial Court suffers from grave infirmity. There is adequate evidence on record to conclusively show that the Petitioner-Institute is an autonomous body owned or controlled by the Central Government and accordingly, it is the Central Government which is the appropriate government in respect of the Petitioner-Institute.

10 Learned Counsel for the Respondent relied upon some judgments of the Supreme Court on the definition of 'appropriate government', all of which have been rendered prior to the amendment of the definition of the “appropriate government” under Section 2(a) of the ID Act. 1947. Prior to that amendment, the question was whether a particular institute is carried on by or under the authority of the Central Government. Now after the definition is amended, several categories have been added to these entries, including autonomous bodies owned or controlled by the Central Government. As I have noted above, the Petitioner-Institute can clearly be termed as an autonomous body owned or controlled by the Central Government.

11 In the premises, Rule is made absolute and the impugned order of the Industrial Court dated 18 December 2015 is quashed and set aside.

12 On the application of learned Counsel for the Respondent, the ad-interim order operating in Complaint (ULP) No.18 of 2015 is continued for a period of six weeks from today.

(S.C.GUPTE, J.)