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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 150 of 2008**

South Eastern Coalfield Limited, A Government Company registered under the Companies Act, 1956, which is Run, Managed and Controlled by the Government of India. Through: Chairman-cum-Managing Director, South Eastern Coalfield Limited, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: the Secretary, Department of Labour, D.K.S. Bhawan, Raipur, Chhattisgarh
2. Assistant Labour Commissioner, Korba, Chhattisgarh
3. Regional Labour Commissioner, Jabalpur, Madhya Pradesh.
4. Smt. Vimla Bai Dewangan, W/o. Shri Amritlal Dewangan, R/o. Gevra Basti, Dharampur, Jhopadi, Tahsil Katghora, District Korba, Chhattisgarh
5. M/s. Ashok Kochar, Contractor, Kusmunda Area, Kusmunda, District Korba, Chhattisgarh

----Respondents**AND****WPL No. 151 of 2008**

South Eastern Coalfield Limited, A Government Company registered under the Companies Act, 1956, which is Run, Managed and Controlled by the Government of India. Through: Chairman-cum-Managing Director, South Eastern Coalfield Limited, Bilaspur, Chhattisgarh

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1. State of Chhattisgarh, Through: the Secretary, Department of Labour, D.K.S. Bhawan, Raipur, Chhattisgarh
2. Assistant Labour Commissioner, Korba, Chhattisgarh
3. Regional Labour Commissioner, Jabalpur, Madhya Pradesh.
4. Smt. Chhat Bai, W/o. Shri Sadhan Binjhar, R/o. Gevra Basti, Dharampur, Jhopadi, Tahsil Katghora, District Korba, Chhattisgarh
5. M/s. Ashok Kochar, Contractor, Kusmunda Area, Kusmunda, District Korba, Chhattisgarh

----Respondents**AND****WPL No. 152 of 2008**

South Eastern Coalfield Limited, A Government Company registered under the Companies Act, 1956, which is Run, Managed and

Controlled by the Government of India. Through: Chairman-cum-Managing Director, South Eastern Coalfield Limited, Bilaspur, Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through: the Secretary, Department of Labour, D.K.S. Bhawan, Raipur, Chhattisgarh
2. Assistant Labour Commissioner, Korba, Chhattisgarh
3. Regional Labour Commissioner, Jabalpur, Madhya Pradesh.
4. Smt. Shanti Bai, W/o. Shri Chedilal Suryavanshi, R/o. Gevra Basti, Dharampur, Jhopadi, Tahsil Katghora, District Korba, Chhattisgarh
5. M/s. Ashok Kochar, Contractor, Kusmunda Area, Kusmunda, District Korba, Chhattisgarh

----**Respondents**

For Petitioner	:	Dr. N.K. Shukla, Sr. Advocate along with Mr. Vikram Sharma, Advocate
For State	:	Mr. Gary Mukhopadhyay, Govt. Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/01/2018

1. These are three writ petitions challenging the notice of conciliation issued by the Assistant Labour Commissioner (Conciliation Officer) under the Industrial Dispute Act, 1947.
2. The petitioner-establishment had raised a preliminary objection in respect of jurisdiction of the State authorities initiating the conciliation proceedings. The said preliminary objection stood decided against the petitioner-establishment vide impugned order dated 23.11.2007. The contention of the petitioner in the present writ petition is that the petitioner-company is a registered company under the Companies Act. The Government of India has the 100% share in the said company and the Managing Director of the petitioner-company, so also the other Directors of the company are appointed by the Central Government and that for all practical purposes it is a

company under the authority and control of the Central Government. It is also the contention of the counsel for the petitioner that the petitioner is a Subsidiary Company of the Coal India Limited, which again is a company incorporated under the Companies Act, 1956, where again the appointments to the post of Chairman-cum-Managing Director, so also the Board of Directors are by the Government of India. It is further contended by the petitioner that the petitioner-establishment is directly under the administrative control of Ministry of Coal Government of India, and it is the Ministry of Coal, which issues all necessary administrative instructions for smooth functioning of the companies. Hence for all practical purposes, the appropriate government so far as the petitioner-establishment is concerned, it should be "the Central Government" and not the State Government and the impugned order therefore, deserves to be set-aside and the notice of conciliation issued by the State authorities also should be quashed.

3. The counsel for the State however opposing the petitions submits that it is a case where the dispute is an employer-employee dispute and the workers involved in the three writ petitions had filed a conciliation application before the Assistant Labour Commissioner/Conciliation Officer, who in turn had issued notice to the petitioner.
4. According to the counsel for the State, it is not a case, where the petitioners should have filed the preliminary objection; so far as the jurisdiction part is concerned, they should have contested the case on merits. He further submits that only because the petitioner-

establishment happens to be a Central Government Public Sector Undertaking by itself would not exclude the jurisdiction of the State authorities in initiating conciliation proceedings in industrial disputes on applications filed before the Conciliation Officer and thus prayed for the rejection of the petitions.

5. It was further contended that the disputes raised were on behalf of those workers who were not directly employed by the petitioner-establishment, but were engaged through contractor and as such were contract labours. Hence it was contended that the Central Government as such does not have any direct control over the petitioner-establishment, rather it is a case where the Central Government only has a control over the Coal India Limited and the S.E.C.L. is only a Subsidiary Company of Coal India Limited and therefore it cannot be presumed that the Central Government is the authority, which controls the petitioner-establishment also.
6. The counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in case of ***"Nashik Workers Union vs. Hindustan Aeronautics Limited"*** reported in ***(2016) 6 SCC 224*** in this regard.
7. Having heard the contentions put forth on either side and on perusal of record, what needs to be appreciated is that when the dispute was seized by the Assistant Labour Commissioner i.e. somewhere in the year 2007, the appropriate government defined under Section 2(a) of the Industrial Dispute Act, 1947 was as under:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,--

(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 a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948, or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948, or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956, or the Oil and Natural Gas registered under the Companies Act, 1956, or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962, or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964, or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976, or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies

owned or controlled by the Central Government, the Central Government, and]

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government; the State Government:

8. However, vide amendment brought to the said definition by virtue of Act 24 of 2010, which came into force from 15.09.2010, the following was also added to the definition of appropriate government, which for ready reference is reproduced herein under:

“[major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

9. If we take into consideration, the subsequent amendment which has been brought into force w.e.f. 15.09.2010, it would reveal that the appropriate government for any company in which not less than 51% of the paid-up share capital is of the Central Government or in respect of a Central Public Sector Undertaking or a Subsidiary Company setup by the principal undertaking or companies controlled by the Central Government, the appropriate government would be the Central Government. This is in addition to the un-amended provision in which the appropriate government for a mining industry was held to be the Central Government. Thus, after the amendment brought into force w.e.f. 15.09.2010, any industry which is; (i) A mine, (ii) Any company in which not less than 51% of the paid-up share capital is held by the Central Government, (iii) A Central Public

Sector Undertaking, (iv) Subsidiary Company setup by the principal undertaking, and (iv) Companies controlled by the Central Government.

10. The appropriate government would be the Central Government. The aforesaid five factors squarely applies in the case of the petitioner-establishment, which means that it is a mining industry. It is also an industry where more than 51% paid-up share capital is held by the Central Government. It is undisputedly a Central Government Public Sector Undertaking. It is also a Subsidiary Company setup by the principal undertaking i.e. the Coal India Limited in the instant case, and undisputedly as per the contention of the State counsel itself, it is the Coal India is under the control and the authority of the Central Government, which means that the appropriate government for these categories of industry/company shall be the Central Government.
11. This Court in WP No. 4669/2004, decided on 17.09.2015 in respect of an issue arising out of the provisions of the Equal Remuneration Act deciding the question as to who would be the appropriate government in paragraph No.7 has held as under:

“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.”

12. At this juncture, it would also be relevant to refer the Constitutional Bench judgment of the Hon'ble 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", wherein in paragraph Nos. 39 and 46 it has been held as under:

"39. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to Central Government though they may be State within the meaning of Article 12 of the Constitution. We have held above that being the instrumentality or agency of the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. 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 I.D. Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a Statute or by virtue of relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the Government company/any undertaking by the Statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the Government company/any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case.

46. We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central

Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression “appropriate Government” in Air India case (supra). Point No.(i) is answered accordingly.

13. It would also be relevant at this juncture to refer to the judgment of the three Judges Bench of Hon’ble Supreme Court in the case of ***“Hindustan Aeronautics Limited and Another vs. Hindustan Aeronautical Canteen Kamgar Sangh and others”*** reported in ***(2007) 15 SCC 51***, wherein in paragraph No.3, the Hon’ble Supreme Court 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 SAIL v. National Union Waterfront Workers and has come to the conclusion that the “appropriate government” will be the government which exercises control and authority over the organisation concerned. It is undisputed that 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”.

14. It would also be noteworthy to take note of the observations of the Hon’ble Supreme Court in paragraph No. 38 of its judgment in the

case of “Steel Authority of India” (supra), wherein it has been 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.*”**

15. If we take into account the aforesaid observations of the Hon’ble Supreme Court referred to in the preceding paragraphs what is culled out is that so far as the issue as to who would be the appropriate government to initiate a dispute would be governed exclusively as per the definition given in Section 2(a) of the Act of 1947. If we take into consideration the conditions stipulated therein as has been narrated in the preceding paragraphs, the Central Government would be the appropriate government in respect of all

those companies, which have been envisaged in the clause 1 of sub-section (a) of Section 2 of I.D. Act. On plain reading of the aforesaid provisions, it clearly reflects that so far as the petitioner-establishment is concerned, undisputedly it is a Mining Industry. It is also a company of which more than 51% of the paid-up share capital is with the Central Government. It is also a Central Public Sector Undertaking and at the same time is also a Subsidiary Company setup by the Principal Undertaking i.e. the Coal India Limited, which is controlled by the Central Government.

16. Under the circumstances, this Court has no hesitation in holding that so far as an individual dispute, which has been seized for conciliation by the State authorities would be beyond his powers and authority. The appropriate government for the raising a dispute under the Industrial Dispute Act as per Section 2(a)(i) of the Industrial Dispute Act would be the Central Government. The order dated 23.11.2007 Annexure P/2 and the notice for conciliation Annexure P/1 in the three writ petitions thus would not be sustainable and the same deserves to be and is accordingly quashed.
17. Needless to mention that quashing of the conciliation proceedings initiated by the State Government would not preclude the workers involved in the dispute from initiating appropriate proceedings before the competent authority under the Central Government.
18. So far as the judgment of the Hon'ble Supreme Court in case of ***“Nashik Workers Union vs. Hindustan Aeronautics Limited”*** reported in ***(2016) 6 SCC 224*** (supra) referred to by the State counsel is concerned, this Court is of the opinion that the facts of the

said case were distinguishable from the facts of the present case as in the said case, the dispute was referred to by the State Government taking into consideration the peculiar situation where there was an industrial unrest prevailing and there was a threat to the industrial peace at the relevant point of time, which is not the facts of the present case, where it is an individual dispute, which has been raised by the individual worker under the provisions of the Industrial Dispute Act.

19. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved