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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th October 2017

Pronounced on: 01st February, 2018

+ **W.P.(C) 5830/2004**

STANDING CONFERENCE OF PUBLIC ENTERPRISES

..... Petitioner

Through Mr. Vinay Bhasin, Sr. Advocate
with Mr. Inderjit Singh,
Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS..... Respondents

Through Mr. Salman Khurshid, Sr.
Advocate with Mr. Rajesh
Kumar, Ms. Sanchita Ain, Ms.
Azra Rehman, Mr. Rahul
Sharma, Mr. C.K. Bhatt and
Mr. Sanjay Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

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C. HARI SHANKAR, J.

1 The Standing Conference of Public Enterprises (known, to the citizenry by the acronymous appellation “SCOPE”) has moved this Court, by means of the present writ petition, challenging the order dated 16th February 1996, as well as the award, dated 2nd December 2003, of the Industrial Tribunal-II (hereinafter referred to as “the Tribunal”) passed in ID No. 212/1995 (*Management of M/s. Standing Conference of Public Enterprises v. Workmen as represented by*

New Delhi General Mazdoor Union).

2 The petitioner claims to have entered into a contract with M/s. Delhi Guard and Security Services (DGSS), for providing security personnel in the SCOPE complex. It claims that the said contract had been terminated w.e.f. 11th May 1991, whereafter all dues, in respect of the workmen engaged through DGSS were settled, and no further service was rendered by the said workmen. The Tribunal, by the impugned order dated 16th February 1996, has held the contract, between the petitioner and DGSS, not to be genuine. Following thereupon, and as a sequel thereto, the Tribunal has, *vide* the impugned award dated 2nd December 2003, directed the regularization, of the workmen who had petitioned it, w.e.f. 1st January 1990, with consequential benefits.

3. The industrial dispute, wherein the impugned order dated 16th February 1996 and the impugned award dated 02nd December 2003, came to be passed, was initiated *vide* Order of Reference No.F.24(1219)/95-Lab dated 20th July 1995, of the Secretary (Labour), Govt. of NCT of Delhi, containing the following term of reference:

“Whether the workmen mentioned in Annexure-A are entitled to absorption/regularization by the management of S.C.O.P.E. and if so, what directions are necessary in this regard?”

4. Before me, Mr. Vinay Bhasin, learned senior counsel appearing for the petitioner, confined his submission to the issue of validity of the aforementioned reference, dated 20th July 1995, made by the

Secretary Labour, Govt of NCT of Delhi. In his submission, the reference ought to have been made by the Central Government, and not by the State Government. As such, the proceedings before the Tribunal, he would contend, stand vitiated *ab initio*, emanating, as they do, from a reference incompetently made. He contends, in this context, that the issue is no more *res integra* being fully covered by an earlier judgment of a learned Single Judge of this Court in ***Standing Conference of Public Enterprises v Government of NCT of Delhi, (W.P (C) 11782/2004)***. Mr. Salman Khurshid, learned senior counsel for the respondent, advanced his submissions by way of rebuttal thereto. In view of the limited submissions advanced at the Bar, I passed the following order, on 27th October 2017:

“Arguments have been advanced on behalf of the petitioner and respondent by Mr. Vinay Bhasin and Mr. Salman Khurshid, learned senior counsel, respectively.

Mr. Vinay Bhasin, Sr. Adv. for the petitioner limited his submission to the argument the reference made under Section 10 of Industrial Disputes Act in the present case was incompetent, as the appropriate Government to make the said reference was not the State Government but the Central Government. Mr. Salman Khurshid, Sr. Adv. has advanced his arguments by way of rebuttal.

Arguments have been concluded and judgment is reserved.

After conclusion of arguments, both counsel submit, at the Bar, that there may be a possibility of settlement. Renotify on 10th November, 2017 for the parties to report whether the dispute has been settled out of the Court or not. In case settlement does not take place, judgment would be pronounced, thereafter, on the basis of the arguments advanced today, in the light of the record available before the Court.”

It was, therefore, understood, at the Bar, that no other contention was

being raised by the petitioner, and, consequently no other issue was answered by the respondent. As such, I have confined my analysis and decision, hereinafter, to the issue of validity of the reference, dated 20th July 1995, by the Secretary (Labour), Govt of NCT of Delhi. Be it noted, in this regard, that the attempt at settlement of the matter was unsuccessful, as was reported, to the court, on 10th November 2017, thereby necessitating this judgement.

5. A brief overview of the factual matrix would, at this stage, be apposite. It is necessary, at the outset, to understand the exact character of the petitioner (SCOPE). Fortunately, a Division Bench of this Court has, in *New Delhi General Mazdoor Union v. Standing Conference of Public Enterprises (SCOPE)*, ILR (1992) I Del 358, subjected the petitioner to a minute psychoanalysis and has, thereafter, expressed its view, thus:

“8. Before we refer to the relevant provisions of the Act it will be appropriate to examine what the SCOPE is and how it is governed and if there are any service regulations for its employees. This is relevant also to see if the SCOPE is an instrumentality of the State. Under Article 12 of the Constitution, the ‘State’ under Part III (Fundamental Rights) includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India under the control of the Government of India. As noted above, SCOPE is a society registered under the Societies Registration Act, 1860. It was registered on September 29, 1970 in the name “New Horizon”. It was then rechristened in its present name (Standing Conference of Public Enterprises). The basic objective of SCOPE is as under:-

“SCOPE looks upon its task as both internal and external to the public sector. Internally, it would endeavour to assist the public sector in such ways as would help improve its total

performance. Externally, it would help improve its total boundary role in conveying such information and advice to the community and the Government as would generally help the public sector in its role”.

9. There are other objects as well. In the booklet Memorandum and Articles of Association of SCOPE there is a copy of letter dated November 8, 1976 addressed by the Government of India to the Chairman of SCOPE wherein it is stated that in view of the aforesaid basic objective of SCOPE, Government had accorded formal recognition to SCOPE. It is mentioned in this letter that Government had taken note of the fact that structure of SCOPE would be as indicated in Articles 6 and 7 of the Articles of Association. Then it is mentioned that with regard to Article 3 under which SCOPE can admit non-Central Government Enterprises as members, it had been decided that such membership might, better be restricted to the institutional/sector-wise representations.

10. Under Article 3 membership of SCOPE is open to (1) all public enterprises of the Central Government, (2) State Government enterprises etc. subject to approval and confirmation by the Executive Board, and (3) other organisations/corporate bodies/institutions again subject to approval and confirmation by the Executive Board. Public enterprise in the Articles of Association means a Government company or a statutory corporation owned and controlled by the Central Government or State Government. SCOPE has two administrative organs- Governing Council and the Executive Board. Under Article 6, Chief Executive of a member enterprise automatically becomes the member of the Governing Council. The Director General, Bureau of Public Enterprises (BPE) and two Advisers in the Bureau not below the rank of Joint Secretaries, to be nominated by the Director General, BPE, shall be ex-officio members of the Governing Council with full voting rights. A nominee of each State SCOPE, affiliated to SCOPE, shall also be an ex-officio member of the Governing Council. It is made clear that in case the Chief Executive is transferred, dies, retires or leaves his post, his successor automatically becomes the member of the Governing Council. Then functions of the Governing Council have been prescribed. The executive authority of SCOPE vests in the Executive Board whose functions are also prescribed. The Board consists of 29 members. Chairman, Vice-Chairman and Director

General, B.P.E., are the ex-officio members of the Board. 19 members are to be elected by the Governing Council and 7 members are to be co-opted as per rules. Chairman and Vice-Chairman are to be elected by the Governing Council. The finances of the SCOPE are provided in Article 10 which is as under –

“Article 10

FINANCES

The finance of the Society shall be derived from subscriptions, contributions donations, bequests, gifts, grants-in-aid, investments, loans, endowments, rents, revenue earning schemes or any other legitimate source approved by the Executive Board which is not contrary to the objects of the Society.”

11. Patron-in-Chief of the SCOPE is Prime Minister of India. In a booklet published by SCOPE it is mentioned that “New Horizon”, a registered society was set up in New Delhi on September 29, 1970 with the basic objective of promoting “better understanding among the public about the individual and collective contribution of public sector”. Gradually the amorphous concepts began to take shape. The objectives were widened and “New Horizon” was rechristened as SCOPE which assumed the role and contours of an apex body of Central Public Sector Enterprises on April 10, 1973. It was given formal recognition by the Government of India on November 8, 1976 by a decision of the Union Cabinet. It is also stated that SCOPE was created by a decision of the Cabinet presided over by the Prime Minister and that it is an apex body of Public Sector Enterprises numbering about 214 with a total investment of nearly about Rs. 40,000 crores and employing about 20 lakhs people. In the form of application for membership of SCOPE one has to specify if the applicant is (1) a Government of India enterprise, (2) a State Govt. enterprise, or (3) any other. The annual subscription for membership is prescribed as Rs. 30,000 for Schedule ‘A’ Company, Rs. 20,000 for Schedule ‘B’ Company and Rs. 10,000 for Schedule ‘C’ and ‘D’ Company. We have been told that this categorisation of companies is of public enterprises guided by the B.P.E., a department of the Central Government in the Ministry of Finance/Industry. The application form does not show the annual membership fee of a company outside these four categories which apply to Government companies. We are further told that the Chief Executive in Schedule

‘A’ public enterprise gets a pay in the pay-scale of Rs. 4,500-125-5,000, that in. Schedule ‘B’ Rs. 4,000-125-4,500, Schedule ‘C’ Rs. 3,500-100-4,000 and Schedule ‘D’ Rs. 3,000-100-3,700. At our instance SCOPE filed a list of members. They number 196 and all of them are Public Sector Undertakings. The building complex of SCOPE at Lodhi Road was built with contributions of various Public Sector Undertakings who have been provided space therein. They are paying service charges as well to the SCOPE for amenities who in turn has also utilised the services of contract labour for various job requirements for the purpose. There is no private party who is either a member of the SCOPE or has got any space in the building complex. All funding of SCOPE is done by various Public Sector Undertakings and not even a penny has been received from any outside agency, either by way of gift, bequest, donation, etc. Chairman and Vice-Chairman of the SCOPE have always been the Chief Executive of various Public Sector Undertakings. It, therefore, does appear to us that though if reference is made to the Memorandum and Articles of Association of the SCOPE, one may get the impression that SCOPE is neither an agency nor instrumentality of State so as to come within the purview of “other authorities” in Article 12 of the Constitution. But then, as the facts show, SCOPE is wearing a mask obviously to show that it is outside the control of the Central Government but no effort is needed to tear open that mask. An argument was raised that funding had to be done by the Government to make SCOPE an instrumentality of State and not that when funding is done by a public sector enterprise who in turn may be getting funded by the Government. This argument is just taken to be rejected. The colour of money does not change by adopting such a method. Reference was made to four decisions of the Supreme Court – (1) *Ramanna D. Shetty v. International Airport Authority* (AIR 1979 S.C. 1628); (2) *Ajay Hasia etc. V. Khalid Mujib Sehravardi and others etc.* (AIR 1981 SC 487); (3) *M.C.Mehta and another v. Union of India and others* (AIR 1987 S.C. 1086) and (4) *Tekraj Vasandi alias K.L.Basandhi v. Union of India and others* (Institute of Constitutional and Parliamentary Studies) (AIR 1988 SC (469)). In *Ramanna D. Shetty’s case* Supreme Court laid the following criteria on the basis of which to determine whether a corporation is acting as instrumentality or agency of the Government and at the same time said it was not possible to formulate an all inclusive or exhaustive test which would adequately answer this question:-

- (1) Financial assistance given by the State and magnitude of such assistance.
- (2) Any other form or assistance whether of the usual kind or extraordinary.
- (3) Control of management and policies of the corporation by the State – nature and extent of control.
- (4) State conferred or State protected monopoly status and
- (5) Functions carried out by the Corporation, whether public functions closely related to governmental functions.

12. The criteria evolved was applied by the Court in *Ajay Hasia's* and *Tekraj Vasandi's (ICPS)* cases. After examining these decisions we are clear in our opinion that our answer should be in the affirmative to hold that SCOPE is an “authority” falling within the definition of ‘State’ in Article 12 of the Constitution. We have no doubt that it is the Central Government which controls the strings in the case of SCOPE. We may also note that in the service rules of SCOPE there is a provision for deputation of officers from Central/ State Governments and other public sector undertakings. These officers can thereafter be absorbed in SCOPE. Services of an employee of SCOPE can also be lent to the Government or any authority subordinate thereto or to any other public undertaking. Further, where an order of suspension is made or disciplinary proceeding is taken against an employee who is on deputation to SCOPE from the Central or State Government or any other public undertaking or a local authority, the authority lending his services is to be informed of the circumstances leading to the order of suspension or the commencement of disciplinary proceedings, as the case may be. An employee of SCOPE is liable to be transferred on deputation/foreign service to any department of the Government or any of the public sector undertaking anywhere in India or abroad. It is difficult to find these service conditions in a private organisation. These conditions show the nexus of SCOPE with the Government. About finances coming from the government agencies, notwithstanding Article 10 have already been noted above and influence of Government on SCOPE, through the B.P.E., a department of the Central Government, we find is all pervasive. We, therefore, hold SCOPE is amenable to writ jurisdiction under Article 226 of the Constitution.”

6. Mr. Bhasin, understandably, strongly relies on the observation, in para 12 of the report in *New Delhi General Mazdoor Union (supra)*, to the effect that “it is the Central Government which control the strings in the case of SCOPE”.

7. Reconnoitring, now, the facts. On 22nd February 1989, the petitioner wrote to the Directorate General Re-settlement (DGR), Ministry of Defence, Government of India, stating that it had constructed a multi-storied office complex at Lodhi Road for accommodating 28 leading public sector undertakings, and was required to provide security services for the said premises. The letter further stated that the petitioner had, till then, been negotiating agencies for such service by open competition, but had been advised, by its management, to “derive such services” through agencies recommended by the DGR. Accordingly, the DGR was requested to recommend four to six agencies, who could be considered for providing such services.

8. The DGR responded *vide* a letter dated 03rd March 1989, addressed to the petitioner, wherein it was clarified that the companies sponsored by the DGR entered into bilateral agreements with it and that, in practice, it used to nominate only one agency, after negotiating emoluments with the public sector undertaking in question. Nomination of more than one agency, it was stated, would neutralize the object for which the DGR was established, which was to stop exploitation of, and rehabilitate, ex-servicemen. Finally, the said

communication stated that, in response to the requisition by the petitioner, the DGR was nominating M/s. Great Ex-servicemen Security Transport Service (P) Ltd.

9. It appears that, thereafter, the petitioner wrote, to the DGR, on 4th August 1989, in response where to the DGR wrote, to the petitioner, on 10th August 1989, nominating the DGSS in addition to M/s. Great Ex-servicemen Security Transport Services (P) Ltd.

10. Following thereupon, on 28th September 1989, the petitioner invited quotations, from M/s. Great Ex-servicemen Security Transport (P) Ltd and DGSS, for providing security services for the SCOPE complex, Lodhi Road.

11. In response to the said communication, bids were received from M/s. Great Ex-servicemen Security Transport Services (P) Ltd. and DGSS, and were put up before a committee constituted by the petitioner, which, *vide* minutes dated 25th October 1989, approved the bid of DGSS. On the basis of such approval, the contract for providing security services at the SCOPE building was awarded, by the petitioner, to DGSS.

12. Invoices issued by DGSS, and receipts of payments made by the petitioner thereagainst, have also been placed on record by the petitioner. It is seen that the invoices raised by DGSS on the petitioner set out the particulars of the Security Personnel provided by

it, with accompanying rates, and that payment, against such invoices, were made by the petitioner to DGSS, against payment vouchers. The petitioner also placed, on record, attendance registers in respect of the Security Personnel, which were also maintained by DGSS.

13. Five writ petitions, one by the New Delhi General Mazdoor Union and the remaining four by the Delhi Officers and Establishment Employees Union, were filed before this Court, against the petitioner herein, avowedly espousing the cause of workmen who had been engaged, by the petitioner, through contractors such as the DGSS. The specific case, canvassed by the petitioner-Unions in the said writ petitions, turned on the fact that the petitioner herein i.e. SCOPE, was not registered under Section 7 and the contractors (including DGSS), through whom services were requisitioned by the petitioner, were not licensed under Section 12 of the Contract Labour (Regularisation and Abolition) Act, 1970 (hereinafter referred to as “CLRAA”, for the sake of convenience). The consequence of this default, in the submission of the petitioner-Unions, was that the workmen were entitled to be treated as direct employees of SCOPE i.e. the petitioner herein. It is not necessary to enter into the particulars of the said judgement; suffice it to state that the said issue was answered, by this Court, in the negative, i.e. in favour of SCOPE and against the petitioner-Unions, holding that non-registration of SCOPE under Section 7, and non-licensing of the contractors, under Section 12, of the CLRAA, would not result *ipso facto* in the workmen becoming direct employees of SCOPE. While so ruling, however, this Court

hastened to clarify that it was not examining the issue of whether the workmen were entitled to be treated as employees of SCOPE under any other Act [including the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”)], or whether they were entitled to raise an industrial dispute in this regard.

14. The said judgement, dated 30th April 1991, of this Court in *New Delhi General Mazdoor Union (supra)*, was carried in appeal, by the petitioner-Unions, to the Supreme Court, by way of various SLPs which, consequent to grant of leave, were converted into Civil Appeal No. 5497/1995 and other associated cases. As the issues involved in the appeals before it were common, the Supreme Court treated Civil Appeal 5497/1995 as the lead case, and returned detailed findings, on the questions arising before it, in para 53 of the report, which reads as under:

“53. Our conclusions and answers to the questions raised are, therefore, as follows:

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is a sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial

adjudicator has to decide whether the contract is a sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is a sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before

him can decide as to who and how many of the workmen should be absorbed and on what terms.”

15. Having thus addressed the issues arising before it, the Supreme Court went on to examine the facts of individual cases. Insofar as the appeals arising from the judgment of this Court in *New Delhi General Mazdoor Union (supra)* is concerned, the following verdict was returned (in paras 72 to 74 of the report):

“72. These appeals arise out of the decision of the High Court in a writ petition filed by the appellant-Union under Article 226 of the Constitution. In view of what we have held above, the decision of the High Court that the workmen concerned do not become the direct employees of the respondent-enterprises merely because there are no registration certificates and licences with the respondent undertakings and the contractors concerned respectively, has to be upheld. The decisions relied upon by Shri Mukhoty on behalf of the workmen, viz., *D.S. Nakara v. Union of India*[(1983) 1 SCC 305: 1983 SCC (L&S) 145] ; *Delhi Transport Corpn.v. D.T.C. Mazdoor Congress* [1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213] and *State of Haryana v. Piara Singh* [(1992) 4 SCC 118: 1992 SCC (L&S) 825: (1992) 21 ATC 403] are inapplicable to the issues involved in these appeals.

73. The remedy of the workmen is to raise a proper industrial dispute as indicated earlier for appropriate reliefs. If and when such dispute is raised, the Government should make the reference within two months of the receipt of the dispute and the industrial adjudicator should dispose of the same as far as possible within six months thereafter.

74. Civil appeals are therefore dismissed but with no order as to costs.”

16. Thus, the Supreme Court limited its finding, on merits, to the issue of whether the default, on the part of the petitioner and the

various contractors (including DGSS), in obtaining registration, and licences, respectively, under the CLRAA would, *ipso facto*, result in the workmen becoming direct employees of the petitioner. A reading of the judgment makes it obvious that the Supreme Court did not, directly or by necessary implication, address itself to the question of the “appropriate Government”, to make a reference, on this issue, under the ID Act. All that is stated, in para 73 of the report, is that, if and when such a dispute is raised, “the Government” should make the reference within two months of receipt of the dispute.

17. At the same time, the dismissal, by the Supreme Court, of the SLPs filed by the Unions representing the interests of, *inter alia*, Respondents 2 to 43 herein, after grant of leave and consequent conversion, of the SLPs into Civil Appeals, necessarily results in merger, of the judgment of this Court, with that of the Supreme Court, in view of the law laid down in a catena of authorities, including ***Kunhayammed v State of Kerala, (2000) 6 SCC 359*** and ***Pernod Ricard India (P) Ltd v Commissioner of Customs, (2010) 8 SCC 313***. The finding, in para 12 of the judgment of this Court in ***New Delhi General Mazdoor Union (supra)***, to the effect that “it is the Central Government which controls the strings in the case of SCOPE” stands, thereby, impliedly affirmed by the Supreme Court. Even otherwise, the said pronouncement, having been returned by a Division Bench of this Court, binds me, and no occasion arises for me to revisit the issue.

18. Proceeding, therefore, from the premise that the controlling Government, in the case of the petitioner, is the Central Government, the question that arises is whether the Government of NCT of Delhi was competent to make the reference, to the Tribunal, wherefrom the present proceedings emanated. Section 10 of the ID Act postulates that “where the *appropriate Government* is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, ... refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second Schedule or the third Schedule, to a Tribunal for adjudication”. The expression “appropriate Government” was defined, in clause (a) of Section 2 of the said Act, in the following terms (till 2010 when it was amended):

‘(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 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees’ State Insurance Corporation established under section 3 of the Employees’ State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A 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 under section 5A and section 5B, respectively, of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life

Insurance Corporation of India established under section 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 under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 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 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 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 (53 of 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, the Central Government,

(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:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.’

It is important to note, here, that the above-extracted definition, of “appropriate Government”, as contained in clause (a) of Section 2 of the ID Act, was amended, by Act 24 of 2010, by substituting the

concluding words “major port, the Central Government, and”, with “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, and”. While the said amended definition, needless to say, would not impact the decision in the present case, it is significant that “autonomous bodies owned or controlled by the Central Government” were brought, within the ambit of sub-clause (i) of clause (a), by the said amendment.

19. Sub-clause (a) of Section 2 (1) of the CLRAA merely incorporated, by reference, the definition of “appropriate Government”, as contained in the corresponding Clause in the ID Act, 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;”

The location of the establishment, therefore, becomes the determinative factor, to assess forum jurisdiction, only under sub-

clause (ii) of clause (a) of Section 2 (1) of the CLRAA.

20. The crucial phrase, in sub-clause (i) of clause (a) of Section 2 (1) of the ID Act – or, for that matter, of the CLRAA – is, clearly, “carried on by or under the authority of the Central Government” – as the petitioner is not one of the “industries” to which the said sub-clause specifically refers.

21. This expression, i.e. “carried on by or under the authority of the Central Government” as used in sub-clause (i) of clause (a) of Section 2 (1) of the ID Act – and, consequently, in the corresponding provision in the CLRAA – has been subjected to close scrutiny in a number of cases, and the issue of the true import of the said expression may, justifiably, therefore, be regarded as no more *res integra*. The leading authority on the issue is, undoubtedly, the judgement of the Constitution Bench of the Supreme Court in ***Steel Authority of India Ltd v National Union Waterfront Workers, (2001) 7 SCC 1***, which addressed the issue head on.

22. ***Steel Authority of India Ltd (supra)*** was the result of a difference of opinion, among judgments of different Benches of the Supreme Court, as perceived by a two-judge bench in ***Food Corporation of India v Transport and Dock Workers Union, (1999) 7 SCC 59***. The work of handling goods in stockyards of the Steel Authority of India Ltd. (hereinafter referred to as “SAIL”) was, in that case, entrusted to contractors. On 15th July 1989, a notification, under

Section 10 (1) of the CLRAA, was issued by the Government of West Bengal, prohibiting employment of contract labour in four specified stockyards of SAIL. In view of the issuance of the said Notification, the National Union Waterfront Workers, espousing the cause of 353 contract labourers, moved the High Court of Calcutta, seeking issuance of a direction to absorb them in the regular establishment. The writ petition was allowed by the learned Single Judge of the High Court, who directed that all the contract labour be absorbed and regularized with effect from the date of issuance of the aforementioned Notification, i.e. 15th July 1989. Appeals, thereagainst, preferred by the SAIL, were dismissed by the Division Bench of the High Court, whereupon SAIL moved the Supreme Court.

23. The very first question framed by the Supreme Court for its consideration, as set out in para 6 of the report, read thus:

“What is the true and correct import of the expression ‘appropriate Government’ as defined in clause (A) of sub-section (1) of Section 2 of the CLRA Act?”

24. On the ambit of the expression “any industry carried on by or under the authority of the Central Government”, the Supreme Court held thus, in paras 28 to 30 of the report:

“**28.** Now, going back to the definition of the said expression, it combines three alternatives viz. (a) any industry carried on by the Central Government, (b) any industry carried on under the authority of the Central Government, and (c) any industry carried on by a railway company. Alternatives (a) and (c) indicate cases of any industry carried on directly by the Central Government or a railway company. They are too clear to admit of any polemic. In regard to alternative (b), surely, an industry being carried on under the authority of the Central Government cannot be equated with any

industry carried on by the Central Government itself. This leaves us to construe the words “under the authority of the Central Government”. The key word in them is “authority”.

29. The relevant meaning of the word “authority” in the *Concise Oxford Dictionary* is delegated power. In *Black's Law Dictionary* the meanings of the word “authority” are:

“Permission. Right to exercise powers; ... Often synonymous with power. *The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent.*”

(emphasis supplied)

In *Corpus Juris Secundum* (at p. 1290) the following are the meanings of the term “authority”: in its broad general sense, the word has been defined as meaning control over; power; jurisdiction; power to act, whether original or delegated. *The word is frequently used to express derivative power; and in this sense, the word may be used as meaning instructions, permission, power delegated by one person to another, the result of the manifestations by the former to the latter of the former's consent that the latter shall act for him, authority in this sense — in the laws of at least one State, it has been similarly used as designating or meaning an agency for the purpose of carrying out a State duty or function; someone to whom by law a power has been given.* In *Words and Phrases* we find various shades of meaning of the word “authority” at pp. 603, 606, 612 and 613: authority, as the word is used throughout the restatement, is the power of one person to affect the legal relations of another by acts done in accordance with the other's manifestations of consent to him; an agency of one or more participating governmental units created by statute for specific purpose of having delegated to it certain functions which are governmental in character; the lawful delegation of power by one person to another; power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to him.

30. From the above discussion, it follows that the phrase “any industry carried on under the authority of the Central Government”

implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government company or other government company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question.”

(Underscoring supplied)

In one breath, para 30 of the report in *Steel Authority of India Ltd (supra)* clearly paranthesises, within the expression “industry carried on under the authority of the Central Government”, the following four categories of industries:

- (i) industries carried on by virtue of power or permission by the Central Government, and pursuant thereto,
- (ii) industries carried out by virtue of conferment of permission conferred by the Central Government, and pursuant thereto,
- (iii) industries carried on by virtue of grant of power or permission, by the Central Government, and pursuant thereto, and
- (iv) industries carried on by virtue of delegation of power or permission, by the Central Government, and pursuant thereto.

25. Without embarking on polemics, the primacy of the expression “power or permission”, as used by the Supreme Court is immediately apparent. If, therefore, an industry is run pursuant to power conferred, in this regard, by, or permission granted, in this regard, by, the Central

Government, the Central Government would be the “appropriate Government”, under sub-clause (i) of clause (a) of Section 2 (1) of the ID Act, or the CLRAA.

26. *Steel Authority of India Ltd. (supra)* went on to clarify that the issue of whether the industry, establishment or undertaking concerned, was “State” within the meaning of Article 12 of the Constitution of India, was not in any manner relevant to determining which the “appropriate Government”, for the purpose of the ID Act, or the CLRAA, would be. A hypothetical example, cited by the Supreme Court in para 38 of the report, while explaining this distinction, is important, in the context of the present controversy, and para 38 may, therefore, be reproduced, to advantage, thus:

“From the above discussion, it follows that the fact of being an instrumentality of a Central/State Government or being “State” within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of “appropriate Government” in the CLRA Act. *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 the above example, if, as a fact, any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial dispute concerning that industry, the appropriate Government will be the Central Government. This is so not because it is an agency or instrumentality of the Central Government but because the industry*

is carried on by the State Government company/corporation/undertaking under the authority of the Central Government. 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.”

(Emphasis supplied)

27. The issue to be addressed is, therefore, not whether the undertaking is a “Central Government undertaking” or a “State Government undertaking”, but as to the Government – Central or State – that has conferred power on, or accorded permission to, the undertaking, to function. If conferment of power, or grant of permission, is by the Central Government, the “appropriate Government”, for the purposes of sub-clause (i) of clause (a) of Section 2 (1) of the ID Act, would be the Central Government; equally, if conferment of power, or grant of permission, is by the State Government, the “appropriate Government”, for the purposes of sub-clause (i) of clause (a) of Section 2 (1) of the ID Act, would be the State Government.

28. Para 39 of the report in *Steel Authority of India Ltd. (supra)* further underscores this point, thus:

“There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to the 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 ID 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 the 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.*”

(Emphasis supplied)

29. Applying the principles enunciated in *Steel Authority of India Ltd. (supra)* to the petitioner (SCOPE), a reading of the judgement in *New Delhi General Mazdoor Union (supra)* discloses that the finding, therein, that the Central Government exercised control over

the petitioner, was founded on clear material, including a letter, dated 8th November 1976, from the Central Government to the Chairman of the petitioner, whereby formal recognition, to the petitioner, was accorded by the Central Government. The said letter states that such recognition was being accorded in view of the basic objective of the petitioner being improvement of the functioning of public sector enterprises. The said letter also communicates the decision, of the Central Government, to restrict the admission, of non-Central Government Enterprises, as members of the petitioner, to institutional/sector-wise representations through either Central or State-level federations. Article 3 of the Articles of Association of the petitioner, too, opens its membership to all public enterprises of the Central Government, whereas enterprises of the State Government, to be eligible for such membership, have to be subjected to approval and confirmation by the Executive Board of the petitioner. The Governing Council of the petitioner, under the said Articles of Association, is the Director General, Bureau of Public Enterprises, and the Council would consist, additionally, of two advisers, not below the rank of Joint Secretaries, to be nominated by the Director General. The Patron-in-Chief of the petitioner is the Prime Minister of India. Further, the petitioner was created by a decision of the Union Cabinet, presided over by the Prime Minister. The cumulative effect of all these facts, apparently, persuaded the Division Bench to, in para 11 of its judgement in *New Delhi General Mazdoor Union (supra)*, observe that “SCOPE is wearing a mask obviously to show that it is outside

the control of the Central Government but no effort is needed to tear open that mask”.

30. The letter dated 8th November 1976 merits reproduction, *in extenso*, as under:

“No. 2 (42)/76-BPE (GM-1)
Government of India
Ministry of Finance
Bureau of Public Enterprises
New Delhi, the 8th Nov, 1976.

Dear Shri Fazal,

I am glad to inform you that we have now obtained Government's orders according formal recognition to the Standing Conference of Public Enterprises as a representative body of the Public Enterprises, in view of the fact that its basic objective, as now formulated, is as under:

“SCOPE looks upon its tasks as both internal and external to the public sector. Internally, it would endeavour to assist the Public Sector in such ways as would help improve its total performance. Externally, it would help improve its total boundary role in conveying such information and advice to the community and Government as would generally help the public sector in its role.”

Government have also taken note of the fact that the major detailed objective of SCOPE, vide the Memorandum of Association are as indicated in Annexure 1. *While agreeing to the formal recognition to the SCOPE, Government, have noted that the structure of the SCOPE will be as indicated in Articles 6 and 7 of the Articles of Association (as it existed on 14.8.1974).*

However, with regard to Article 3 of the Articles of Association, under which SCOPE can admit non-Central Government Enterprises as members, it has been decided that such membership may better be restricted to the institutional/sector-wise representation through either Central or State Level federations.

Regards,

Yours sincerely,
Sd/-
(Bazle Karim)

Shri Mohd. Fazal
Chairman
Standing Conference of Public Enterprises
Chandralok, 36 Janpath
New Delhi.”

31. Clearly, therefore, the petitioner functions under the control of the Central Government, and more significantly, has been empowered and permitted to do so by the Central Government, as the above evidence amply discloses. The petitioner is, therefore, liable to be regarded as functioning “by or under the authority of” the Central Government. I am, therefore, in agreement with the judgment, of Shiv Narayan Dhingra, J., speaking for this Court, in *Standing Conference of Public Enterprises v Government of NCT of Delhi, 2007 (93) DRJ 616*, to the extent that the Central Government would qualify to be regarded as the “appropriate Government”, to refer an industrial dispute under Section 10 of the ID Act. The said decision also relies, for this conclusion, on a letter, dated 11th February 2000, from the Ministry of Labour, Government of India categorically stating that the “appropriate Government in respect of the petitioner under Contract Labour (Regulation and Abolition) Act, and ID Act, was the Central Government”. It is also noted, in the said decision, that the

registration, of the petitioner, under the Societies Registration Act, 1860, was also at the behest of the Central Government.

32. Does this, however, mean that the reference, dated 20th July 1995, as made by the Government of NCT of Delhi, to the Tribunal in the present case, stands vitiated *ab initio* for incompetence, as Mr. Bhasin would contend?

33. Though there is considerable ambivalence of judicial thought which could influence the decision on this issue, in the ultimate eventuate, the answer, has, inevitably in my opinion, to be in the negative. The reason, simply put, is to be found in Clause (f) of Rule 2 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as “the ID Rules”), and the evolution of law thereon, to which I shall presently advert.

34. Clause (f) of Rule 2 of the ID Rules – on which considerable emphasis was laid by Mr. Khurshid - reads thus:

“2. Interpretation - In these rules, unless there is anything repugnant in the subject or context,

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) xxxxx

(e) xxxxx

(f) *in relation to an industrial dispute in a Union territory, for which the appropriate Government is the Central Government, reference to the Central Government or the Government of India shall be construed as a reference to the*

Administrator of the territory, and reference to the Chief Labour Commissioner (Central), Regional Labour Commissioner (Central) and the Assistant Labour Commissioner (Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the territory”;

(Emphasis supplied)

35. The opening words of Clause (f) of Rule 2 of the ID Rules make it clear that the said clause applies only to industrial disputes (i) which arise in Union Territories, and (ii) in respect of which, under the ID Act, the “appropriate Government” is the Central Government. Delhi continues to be a Union Territory, figuring at the head of the First Schedule to the Constitution of India, and Article 239AA of the Constitution of India clearly states that *the Union Territory of Delhi* would, after the enactment of the said Article, be known as the National Capital Territory of Delhi. The industrial dispute, in the present case, undoubtedly arose within the Union Territory of Delhi, and the discussion hereinabove also clarifies that the “appropriate Government”, for the purposes thereof, is the Central Government. Both ingredients of clause (f) of Rule 2 of the ID Rules, thereby, stand satisfied.

36. There is wealth of judicial authority to the effect that, by virtue of clause (f) of Rule 2 of the ID Rules, in the case of industrial disputes arising within Union Territories, the Administrator of the concerned Union Territory is competent to make the reference to the Labour Court or Industrial Tribunal, under Section 10 of the ID Act.

A glance, thereat, would be apposite.

37. In *Goa Sampling Employees' Association v General Superintendence Co. of India*, (1985) 1 SCC 206, a dispute, raised by the Goa Sampling Employees' Association was referred, by the Central Government, to the Industrial Tribunal. A preliminary objection, to the effect that the Central Government was incompetent to make the reference, was taken. The Supreme Court held that the Administrator of the Union Territory could not be regarded as the "State Government". Relying on Section 3 (60) of the General Clauses Act, 1897, it was further held that the said clause "upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever the expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government" and that "the very concept of State Government in relation to Union Territory is obliterated by the definition". The said decision having been rendered prior to the enactment of Article 239AA in the Constitution, it went on to hold that "the concept of State Government is foreign to the administration of Union Territories and Article 239 provides that the Union Territory is to be administered by the President". Further, it was held that "the President may act through an Administrator appointed by him" who was "thus the delegate of the President".

38. The obliteration, of the distinction between the Central Government, State Government and the Administrator, in the case of

Union Territories, was also underscored by a Division Bench of this Court in *Leela Separators Pvt Ltd v Secretary (Labour), Delhi Administration, ILR (1981) II Delhi*.

39. The above decisions did not, however, examine clause (f) of Rule 2 of the ID Rules.

40. The position that resulted by virtue of Clause (f) of Rule 2 of the ID Rules was, however, squarely addressed by a Division Bench of this Court, speaking through S. B. Sinha, C.J. (as he then was) in *M.C.D. v Mahavir, (2002) 97 DLT 922*, which dealt with the case of a gardener in the Horticulture Department of the Municipal Corporation of Delhi (MCD). Consequent to his termination, the said gardener raised an industrial dispute, contending that he had been illegally retrenched. The matter was referred to the Labour Court, by the Delhi Administration, and award was rendered thereon. In the challenge thereto, the learned Single Judge of this Court, relying on clause (f) in Rule 2 of the ID Rules, held the reference itself to be without jurisdiction, as the Delhi Administration did not possess the requisite power to refer the industrial dispute for adjudication. Taking into stock the provision contained in the said clause, the Division Bench, in appeal, noticed that the power, thereunder, which could be exercised by the Central Government, stood delegated to the Lt. Governor. Thereafter, this Court noticed Article 239 AA of the Constitution of India and unequivocally held, in para 17 of the report, as under:

“Having regard to the fact that the Lt. Governor is the agent of the

President of India, *he for all intent and purpose would be the Central Government in relation to statutes which are applicable to NCT of Delhi including Industrial Disputes Act.*”

(Emphasis supplied)

Further on, in the said decision, this Court proceeded to hold that clause (f) of Rule 2 of the ID Rules “also covers subject matters envisaged under Section 10 (1) of the Industrial Disputes Act”. Reliance was placed, for the said proposition, on *Goa Sampling (supra)*. Due note was also taken, by this Court in the said decision, of the judgement in *Steel Authority of India Ltd (supra)*, whereafter this Court observed thus:

“Thus even if in a case where Central Government is the appropriate Government in relation to the disputes arising within the jurisdiction of NCT *the latter can also take action in terms of Rule 2(f) of the Rules.*”

(Emphasis supplied)

41. This decision, therefore, holds, in unambiguous terms, that the Lt. Governor was competent to make the reference, under Section 10 of the ID Act, in the case of an industrial dispute that arose within the province of the Union Territory of Delhi.

42. I may mention, here, that, in response to the reliance, placed by Mr. Salman Khurshid, on this decision, Mr. Vinay Bhasin sought to draw my attention to para 6 thereof. However, on a reading of the said para, I am of the opinion that it does not advance the case of the petitioner, or impede that of the respondent. The said para merely refers to the contention, of the Management of the MCD, in that case, that “having regard to the nature of business carried out by the

petitioner the Central Government is the appropriate Government”. There is no dispute that, under the ID Act, the Central Government is the “appropriate Government”, in the present case; indeed, this is a *sine qua non* for clause (f) of Rule 2 of the ID Rules to apply, as has already been noticed hereinabove. The reliance, by Mr. Salman Khurshid, on *Mahavir (supra)* is, therefore, well-taken.

43. *Mahavir (supra)*, and the law laid down therein, has guided later decisions. In *Apparel Export Promotion Council v Presiding Officer, 2002 (3) LLN 34 (Del)*, Sanjay Kishan Kaul, J. (as he then was) quoted, approvingly, the ratio of an earlier decision of this Court in *National Building Construction Corporation Ltd v M. K. Jain, 1981 Lab IC 62* - in a case in which the reference had been made, to the Labour Court, by the State Government, and, as in the present case, it was sought to be contended that the reference was incompetent, as it had to be made by the Central Government - to the effect that “no exception could be taken to the order of reference, even if it be assumed that Central Government was the appropriate Government, inasmuch as the distinction between the Central and the State Governments in relation to the Union Territory in our constitutional framework is rendered illusory”. *Goa Sampling (supra)*, it may be noted, was also taken into account, while rendering the said decision, and it was observed, in this regard, that “the same was concerned with the distinction between the powers of the Administrator in the Union Territory of Delhi to that of a Governor in a State and the same would thus be applicable only in respect of the

said issue since the effect of Rule 2(f) of the Rules was not in issue.” This distinction, in my respectful opinion, appears entirely apt, and I express my complete concurrence therewith. It may also be noted, in passing, that this decision, of Kaul, J. (as he then was), in *Apparel Export Promotion Council (supra)* was one of the decisions which were affirmed, in appeal, by the judgement of the Division Bench of this Court in *New Delhi General Mazdoor Union (supra)*.

44. Another learned Single Judge of this Court echoed the same sentiment in *Kanhaiya Lal v. UOI, 2007 (2) LLJ 1022 (Del)*. In that case, too, an industrial dispute, raised by an employee of the Rajghaat Samadhi Committee, which functioned under the authority of the Central Government, was referred to by the Secretary (Labour), Government of NCT of Delhi, to the Labour Court. It was contended, by the Management, that the reference was invalid, as the Central Government alone was competent to make it. Accepting the said proposition, the Labour Court declined to return any decision on merits. This Court, speaking through Rekha Sharma, J., after extracting Clause (f) of Rule 2 of the ID Rules, proceeded to hold thus:

“It is clear from the above rule that if an industrial dispute for which the appropriate Government is the Central Government has arisen in a Union Territory, reference to the Central Government or Government of India shall be read as reference to the Administrator of the territory while reference to the Chief Labour Commissioner (Central), Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) shall be read as reference to the

appropriate Government appointed in this behalf by the Administrator of the Territory. Therefore, to say, that the Secretary (Labour), Government of NCT, Delhi, was not competent to refer the dispute would be ignoring the statutory provision”.

45. A similar dispute arose before Swatanter Kumar, J. (as he then was), sitting singly, in *Sports Authority of India v. Sports Authority Kaamgar Union*. In that case, too, reference, under Section 10 of the ID Act, as made by the Government of NCT of Delhi, was alleged to be incompetent, the Sports Authority of India being a body under the control of the Central Government. This Court rejected the said submission holding thus:

“8. Lastly, it was contended that Sports Authority of India is a body under the control of Central Government and as such Government of Delhi had no jurisdiction to make a reference. The appropriate Government which could exercise the jurisdiction under Section 10(1)(e) of the Act, was the Central Government. It has already been discussed that the petitioner authority is an industry and is under the control of the Union. Full Bench of this Court in the case of *Indian Tourism Development Corporation, New Delhi Vs. Delhi Administration and Ors., 1982 (61) FJR 139*, clearly enunciated the principle that Lt. Governor or Administration of Union Territory of Delhi would discharge functions and powers of the State Government under the Industrial Disputes Act, 1947 and powers of the kind to make reference stood delegated to the State Government under Section 39 of the Notification. Even earlier to this, this view was followed by a Division Bench of this Court in the case of *M/s. Lila Separator Pvt. Ltd. Vs. The Secretary (Labour), Delhi Administration, and Ors., 1981 (43) FLR 170*. Reference can also be made to the judgment of this Court in the case of *Apparel Export Promotion Council Vs. Presiding Officer, Industrial Tribunal No.1 and Ors., 2002 (3) LLJ 511*.

9. In view of the above considered view of this Court and the larger Bench which is binding upon me, I have no hesitation in rejecting the

contention raised on behalf of the petitioner in regard to the invalidity of the reference on the ground of lack of jurisdiction of Delhi Administration to make such a reference. For the reasons aforestated I find no merit in this petition, the same is dismissed. However, the parties are left to bear their own costs”.

46. In the light of the cornucopia of case law cited hereinabove, it is not possible, for me, to accept the submission of Mr. Vinay Bhasin, learned senior counsel, that the reference dated 20th July 1995, made in the present case by the Secretary (Labour), Government of NCT of Delhi, was incompetent and sans jurisdiction. No doubt, the judgment of Dhingra, J. in *Standing Conference of Public Enterprises (supra)* supports the stand of Mr. Bhasin. However, the said decision does not take into account Rule 2 (f) of the ID Rules, which makes all the difference, as was significantly noted in *Apparel Export Promotion Council (supra)*. The wealth of judicial authority that exists, based on the said clause, compels me to accept the stand advanced by Mr. Salman Khurshid that the reference, in the present case, was indeed competent.

47. In view of the fact that Mr. Vinay Bhasin did not seek to urge any submission on merits, and Mr. Salman Khurshid, too, consequently, addressed no submission on merits by way of rebuttal either, it would not be proper for me to return any finding on the merits of the impugned award dated 16th February 1996 and order dated 2nd December 2003.

48. Resultantly, the present writ petition stands dismissed.

49. There shall be no order as to costs.

**C. HARI SHANKAR
(JUDGE)**

FEBRUARY 01, 2018
neelam/nitin/gayatri