

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2388 OF 2002

...
National Institute Of Industrial EngineeringPetitioner
V/S

Nitie Employees' Union & Ors.Respondents

...
Mr.Rahul Nerlekar a/w Mr.A.M.Nathani and Amreen Shaikh i/b A.M.Nathani
& Tanu Mehta Tiwari for the Petitioner.
Mr.Ashok D. Shetty For Respondent No. 1.
...

**CORAM : A.A. SAYED &
SMT. DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**RESERVED ON: 15 JANUARY 2019
PRONOUNCED ON: 04 FEBRUARY 2019**

JUDGMENT: (Per **A.A. Sayed J**)

By this Petition filed under Article 226 of the Constitution, the Petitioner has impugned the judgment and order dated 28-06-2002 passed by the Industrial Court, Mumbai. By that order, the Application (MRTU) No.5/2000 filed by the Respondent No.1-Union for registration as a recognized union under Section 11 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act") came to be allowed and the Respondent No.1-Union was permitted to function as recognized union with the Petitioner within the

jurisdiction of the Industrial Court, Mumbai. The Industrial Court held that the 'appropriate Government' in relation to the Petitioner is the State Government and therefore the Application of the Respondent No.1-Union was maintainable.

2. The principal issue involved in the Petition is whether the 'appropriate Government' as defined under section 2(a) of the Industrial Disputes Act, 1947 in relation to an industrial dispute concerning the Petitioner is the Central Government or the State Government. Only if the 'appropriate Government' is the State Government, the provisions of MRTU & PULP Act would apply and the Application of the Respondent No.1-Union under section 11 of the MRTU & PULP Act, would be maintainable. According to the Petitioner, the Application of the Respondent No.1-Union was not maintainable as the appropriate Government for the Petitioner is the Central Government and the Industrial Court erroneously held that the appropriate Government for the Petitioner is the State Government and that the Application of the Respondent No.1 Union is maintainable.

3. The term "appropriate Government" is defined under section 2(a) of the Industrial Disputes Act, 1947. Section 2(a) as it stood at the relevant time (i.e. at the time of filing of the Application by the Respondent No.1-Union) read as follows:

“2(a) “appropriate Government” means--

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labor 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 Corporations 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 Corporation 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 major port, the Central Government, and

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

4. On perusal of the aforesaid definition of 'appropriate Government', it is seen that section 2(a)(i) essentially speaks of the following categories of industries viz. (i) those 'specified/enumerated' in the latter part of section 2(a)(1) or any controlled industry as may be "specified" by the Central Government (ii) those which are being carried out 'by' the Central Government and (iii) those which are being carried out 'under the authority of' the Central Government. If the industry does not fall in the aforesaid three categories, only then the appropriate Government for that

industry would be the State Government as provided under section 2(a)(ii). The Petitioner is not 'specified/enumerated' by name in the latter part of the section 2(a)(i) or a controlled industry 'specified' by the Central Government. It is also an undisputed position before the Court that the Petitioner is not an industry carried on 'by' the Central Government (e.g. Department of Posts & Telegraph etc.). Therefore, what is required to be examined is whether the Petitioner is an industry being carried on 'under the authority of' the Central Government. If the Petitioner is being carried out 'under the authority of' the Central Government, the appropriate Government in relation to the Petitioner would be the Central Government. If the Petitioner is not being carried on 'under the authority of' the Central Government, then alone the appropriate Government in relation to the Petitioner would be the State Government.

5. In **Steel Authority of India Ltd. & ors. V/s. National Union Water Front Workers & Ors.**, AIR 2001 SC 3527, the 5-Judge Constitution Bench of the Supreme Court has considered the expression "appropriate Government" under the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act") and the Contract Labour (Regulations and Abolition) Act, 1970 (hereinafter referred to as "the CLRA Act"). In para 2 of the judgment, the Constitution Bench noted that due to conflict of opinion between

different Benches including two 3-Judge Bench on the interpretation of the expression “appropriate Government” in section 2(a) of the ID Act and in section 2(1)(a) of the CLRA Act, the matter was referred to the larger Bench. In para 20 of the judgment, the Constitution Bench has extracted the definition of “appropriate Government” under the CLRA Act (as amended with effect from 28-01-1986) and in para 22, the Constitution Bench extracted the definition of “appropriate Government” under the Industrial Disputes Act. In paragraph 23, the Constitution Bench observed as follows:

“23. An analysis of this provision shows that the Central Government will be the appropriate Government in relation to an industrial dispute concerning :

- (1) any industry carried on by or under the authority of the Central Government, or by a railway company; or
- (2) any such controlled industry as may be specified in this behalf by the Central Government; or
- (3) the enumerated industries (which form part of the definition quoted above and need not be reproduced here).”

In paragraph 24, the Constitution Bench noted that the phrase “any industry carried on by or under the authority of the Central Government” is a common factor in both the definitions. In para 30, the Constitution Bench stated as follows:

“30. From the above discussion, it follows that the phrase any industry carried on by or 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.”

In para 38, the Constitution Bench said:

“38. From the above discussion, it follows that the fact of being instrumentality of a Central/State Govt. 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 Govt. 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.”

In para 39, the Constitution Bench held as follows:

“39. ... To hold that the Central Government is the appropriate Government in relation to any 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 “appropriate

Government” under the CLRA Act and the I.D. Act, provided the industry in question is carried on by a Central Government company/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.

(emphasis supplied)

In para 46, the Constitution Bench held thus:

“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's case (supra). Point No.1 is answered accordingly.”

(emphasis supplied)

The Constitution Bench in the aforesaid decision has referred to and discussed various rulings including (1) **Heavy Engineering Mazdoor Union v/s. State of Bihar**, 1969 (1) SCC 765; (2) **Hindustan Aeronautics Ltd. and Rashtriya Mill Mazdoor Sangh**, 1975 (4) SCC 679; (3) **Rashtriya Mill Mazdoor Sangh vs The Model Mills, Nagpur And Anr.** 1984 Suppl. SCC 443 (3-Judge Bench); (4) **Food Corporation of India, Bombay & Ors. vs. Transport & Dock Workers Union & Ors.**, 1997 (7) SCC 59; (5) **Air India Statutory Corporation vs United Labour Union & Ors.**, 1997 (9) SCC 377 (overruled);

6. Learned Counsel for the Petitioner submitted that the Petitioner is an autonomous body registered under The Societies Registration Act, 1960 and is under the Ministry of Human Resources, Higher Education, Government of India. He submitted that since inception the Petitioner is fully financed by the Government of India. The learned Counsel has taken us through the Memorandum of Association and the Rules of the Petitioner threadbare as also the letters dated 21 May 1984 (Exhibit B to the Petition), 31 March 1986 and 31 October 1988 and the communications at Exhibit K-1 to K-9 of the Petition. The learned Counsel pointed out that the Board of

Governors which is the governing body consist of 21 persons- 14 appointed or nominated by the Central Government and the remaining are nominated/appointed by the Board of Governors. He submitted that the accounts of the Petitioner are audited by the Comptroller and Auditor-General of India. He submitted that the pay scales of the employees of the Petitioner are at par with the employees of the Central Government. He submitted that the Petitioner is being carried on entirely under the authority of the Central Government. He submitted that the appropriate Government in relation to the Petitioner is the Central Government and the Application of the Respondent No. 1 Union for recognition under the provisions of MRTU & PULP Act was not at all maintainable. He submitted that the Industrial Court by the impugned order has erroneously held that the appropriate Government in relation to the Petitioner is the State Government and that the Application for the Respondent No. 1 Union was maintainable. He submitted that even the Respondent No. 1 Union knew that Central Government is the appropriate Government in relation to the Petitioner and therefore before filing the Application for recognition under MRTU & PULP Act, they made a statement before the Conciliation Officer (Central) that for granting recognition, the Respondent No. 1 Union would approach the Secretary, Ministry of Labour, Government of India. The learned Counsel in support his submissions has placed reliance upon the following judgments:

- (i) **Padam Bahadur Khanka Vs. National Institute for Training & Ors.**, 1987 CLR Bom. Page 457, of the Single Judge of this Court.
- (ii) **Indian Institute of Technology Vs. Shahabuddin Usman Raut & ors.** In WP No.2477 of 1994 of Single Judge of this Court.
- (iii) **National Building Construction Corporation Ltd. Vs. Ram Pal Singh & anr.** 1998(8) FLR 632, of Single Judge of this Court.

7. Learned Counsel for the Respondent No.1-Union supported the impugned order and submitted that it cannot be said that the Petitioner is functioning under the authority of the Central Government. He submitted that the Industrial Court has rightly held that the Application of the Respondent No. 1 Union is maintainable as the appropriate Government concerning the Petitioner is the State Government. The learned Counsel has placed reliance upon the following judgments:

- (i) **Steel Authority of India Ltd. V/s. National Union Water Front Workers and ors.**, AIR 2001 SC 3527 (discussed above);
- (ii) **Tata Memorial Hospital Workers Union v/s. Tata Memorial Centre and Anr.** (2010) 8 SCC 480;
- (iii) **Heavy Engineering Mazdoor Union v/s. State of Bihar**, 1969 (1) SCC 765;

8. We have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent No. 1 Union. In order to determine whether the appropriate Government is the Central Government in relation to the Petitioner what is required to be considered is whether the Petitioner is being carried on 'under the authority' of the Central Government as discussed in paragraph 4 hereinabove. As held by the 5-Judge Constitution Bench of Supreme Court in **SAIL's** case (supra), whether there is any conferment of authority on the undertaking by the Central Government to carry on the industry has to be ascertained on the facts and circumstances of the case. It would therefore be necessary to have a look at the Memorandum of Association and the Rules of the Petitioner, which interalia lay down the constitution of the Petitioner and the manner in which the Petitioner is managed, governed and regulated. The Memorandum of Association and the Rules are annexed at Exh.`A' of the Petition. The relevant clauses of the Memorandum of Association and the Rules of the Petitioner are extracted hereinbelow (we are told that there are no bye-laws framed by the Petitioner):

“MEMORANDUM OF ASSOCIATION

1. (i) *The name of the Society is the National Institute of Industrial Engineering Society.*

(ii)

2.

3. *The objects for which the Society is established are:*

(i) *To establish and to carry on the administration and management of the National Institute for Industrial Engineering. The functions of the Society shall be*

(a) to impart knowledge and training in Industrial Engineering and other Productivity Sciences for persons from industry, technical institutions, bodies and associations, connected with industry in such a way as to equip them thoroughly to practice the techniques in which they have been trained or, in appropriate cases, to instruct others in the practice of these techniques.

(b) to award diploma certificates and other distinctions to candidates educated and trained and to prescribe standards of proficiency to be demonstrated before the award of certificates of competence;

(c) to assist, institute and carry out research into matters concerning the use of Industrial Engineering and allied techniques and methods conducive to the improvement of productivity;

(d) to institute and award fellowships, scholarships, prizes and Medals in accordance with the Rules and Bye-laws;

(e) to confer honorary awards and other distinctions;

(f) to fix and demand such fees and other charges as may be laid down in the Bye-laws made under the Rules of the Society.

(g) to establish, maintain and manage halls and hostels for the residence of students;

(h) to create administrative, technical and ministerial and other posts under the society other than the post of Director of the Institute and to make appointments thereto provided that the posts so created are in the cadre and scales of pay as approved by the

Government of India from time to time. The appointment to the post of Director shall be made with the approval of the Government of India on such terms and conditions as may be decided by the Central Government: However proposals relating to emoluments structure i.e. adoption of pay scales, allowances and revision thereof and creation of posts of which the maximum of the pay scale exceeds Rs.4,500/- p.m. would need the prior approval, of the Government of India.

... ..

(o) to contribute in the process of industrial development by promoting self-employment and helping in the formulation of national policies related to resource, energy and environment;

(p) to contribute to the improvement of productivity in the undermanaged and on traditional sectors of the economy like cottage industries, handicraft industries, agricultural and farm co-operative, etc.:

(ii) to make rules and Bye-laws for the conduct of the affairs of the society and to add to, amend, vary or rescind them from time to time, with the approval of the Central Government;

(iii) to acquire and hold property, provided that prior approval of the Central Government is obtained for the acquisition of immoveable property;

(iv) to deal with any property belonging to or vested in the society in such manner as the society may deem fit for advancing its objects, provided that prior approval of the Central Government is obtained for transfer of any immoveable property.

(v) to maintain a Fund to which shall be credited:

(a) all moneys provided by the Central Government;

(b) all fees and other charges received by the Society;

- (c) *all moneys received by the Society by way of grant, gifts, donations, benefactions, bequests or transfer; and*
- (d) *all moneys received by the Society in any other manner or from any other sources.*
- (vi) *to deposit all moneys credited to the fund in such Banks as the society may, with the approval of the Central Government, decide (i.e. State/Nationalised Banks and to invest any surplus funds not needed for immediate Research work etc., only in deposits in State Bank of India/Nationalised Banks or Govt. securities.*
- (vii) *to meet the expenses of the Society including expenses incurred in the exercise of its powers and discharge of its functions out of the fund.*
- (viii) *to prepare and maintain accounts and other relevant records and to prepare an annual statement of accounts including the balance sheet of the Society in such form as may be prescribed by the Central Government in consultation with the Accountant General, Bombay.*
- (ix) *Please see Rule 18.*
- (x) *to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Society;*
- (xi) *to constitute such Committee or Committees as it may deem fit for the disposal of any business of the institute or for tendering advice in any matter pertaining to the institute.*
- (xii) *to delegate any of its powers to the Board of Governors of the Institute or any of the Committee or Committees constituted by it.*
- 4. ...
- 5. *The Central Government may at any time appoint one or more persons to review the work and progress of the society or the institute and to hold any enquiry into the affairs thereof and to report*

thereon, in such manner as the Central Government may stipulate. Upon receipt of any such report, the Central Government may take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report regarding the society or the institute, as the case may be and the society shall be bound to comply with such directions.

6. In case the Central Government is satisfied that the Society or the Institute is not functioning properly, the Central Government shall have the power to take over the administration and assets of the institute.
7. If, on winding up or dissolution of the Society, there shall remain, after satisfaction of all its debts and liabilities, any assets and property whatsoever, the same shall not be paid to or distributed among the members of the society or any of them but shall be dealt with in such manner as the Central Government may determine.
8. The names, addresses and occupations of the first members of the Governing Body of the Society to which by the Rules and the Bye-laws of the Society, the management of its affairs is entrusted, are:

1.	<u>The Chairman appointed by the Central Government</u>	(Names & Address)	Chairman
2,	<u>Nominee of the Central Government to represent its Ministry of Finance</u>	-do-	Member

3.	<u>Nominee of the Central Government to represent its Ministry of Scientific Research & Cultural Affairs</u>	-do-	-do-
4.	<u>Nominee of the Central Government to represent its Ministry of Commerce and Industry</u>	-do-	-do-
5.	<u>Representative of the National Productivity Council</u>	-do-	-do-
6.	<u>Representative of the All India Council for Technical Education</u>	-do-	-do-
7, 8, 9 & 10	<u>Four representatives of industry including public enterprises & nominated by the Central Government</u>	-do-	-do-
11 & 12	<u>Two representatives of the Workers Organisations nominated by the Central Government</u>	-do-	-do-
13 & 14	<u>Two members representing other interests such as Engineering profession,</u>	-do-	-do-

	<i>technical institutions etc. <u>nominated by the Central Government</u></i>		
15.	<i>The Director of the Institute</i>	<i>-do-</i>	<i>(Ex-officio Member & Secretary)</i>

RULES

1. ...
2. The Society shall for the time being consist of the following members:
 1. Chairman : To be appointed by the Central Government
 - 2,3 & 4 : Three nominees of the Central Government representing its Ministries of Finance, Scientific Research and cultural Affairs and Commerce and Industry
 5. : One representative of the National Productivity Council.
 6. : One representative of the All India Council for Technical Education.
 - 7,8,9 & 10 : Four representatives of Industry including Public enterprises nominated by the Central Government.

- 11 & 12 : Two representatives of Workers organisations nominated by the Central Government.
- 13 & 14 : Two members representing other interests such as Engineering Profession, technical institutions etc. nominated by the Central Government.
15. : The Director of the Institute (Ex-officio-Member)
16. : Registrar (Ex-officio-Secretary)
3. ...
4. The general superintendence, direction and control of the affairs of the Society and its income and property shall be vested in the Governing Body of the Society, which shall be called the Board of Governors, National Institute for Industrial Engineering hereinafter referred to as "The Board".
5. The Board shall be composed of the following members:
1. Chairman : To be appointed by the Central Government
 "(Vice-Chairman)
- 2,3 & 4 : Three nominees of the Central Government representing its Ministries of Finance, Scientific Research and cultural Affairs and Commerce and Industry
5. : One representative of the National Productivity Council.

6. : *One representative of the All India Council for Technical Education.*
- 7,8,9 & 10 : *Four representatives of Industry including Public enterprises nominated by the Central Government.*
- 11 & 12 : *Two representatives of Workers organisations nominated by the Central Government.*
- 13 & 14 : *Two members representing other interests such as Engineering Profession, technical institutions etc. nominated by the Central Government.*
- 15 & 16 : *Two members representing interests such as Industrial Engineering, Productivity Sciences, etc., to be co-opted by the Board.*
17. : *One representative of the Govt. of Maharashtra to be co-opted by the Board.*

“See Bye-law No.9

(“the Chairman may nominate a member of the Board located at Bombay as Vice-Chairman”.....)

18. : *The Director of the Institute (Ex-officio-Member)*
19. : *Registrar of the Institute (Ex-Officio-Secretary)*

20 & 21. : Two members of NITIE teaching faculty to be co-opted by the Chairman on year to year basis.

6. (i) Where a member of the Society or the Board becomes such member by reasons of the office he holds, his membership shall terminate when he ceases to hold that office.

(ii) A member of the Society or the Board representing the Central Government shall continue to be such member during the pleasure of the Central Government;

(iii) & (iv)

7. A member of the Society or the Board shall cease to be such member if he (a) dies or (b) resigns his membership or (c) becomes of unsound mind or (d) becomes insolvent or (e) is convicted for a criminal offence involving moral turpitude or (f) if he is removed by the Central Government from the membership of Society, or (g) if, except in the case of the Director of the institute, he accepts a full-time appointment in the institute or (h) if he fails to attend three consecutive meetings of the Society or the Board without the leave of the Chairman.

8. (i) The Chairman of the Society or the Board may resign his office by a letter addressed to the Central Government and his resignation shall take effect from the date it is accepted by the Central Government.

(ii) A member of the Society or the Board (other than an ex-officio member or a member representing the Central Government) may resign office by letter addressed to the Chairman and such resignation shall take effect from the date it is accepted by the Chairman.

...

12. *Powers and functions of the Board:*

Subject to the provision of the Memorandum, the Board shall have the powers:

(i) to prepare and execute detailed plans and programmes for the establishment of the Institute and to carry on its administration & management after such establishment:

(ii) to receive grant and contribution and to have custody of the funds of the Institute;

(iii) to prepare the budget estimates of the society for each year, and to sanction the expenditure within the limits of the budget as approved by the Central Government;

(iv) to prescribe and conduct courses of study, training and research in industrial Engineering and allied subjects:

(v) to prescribe rules and regulations for the admission of students to the various courses of study in conformity with the policy approved in this behalf by the Central Government.

(vi) to lay down standard of proficiency to be demonstrated before the award of certificates of competence in respect of the courses offered by the Institutes;

(vii) to institute and award fellowships, scholarships, prizes and Medals;

(viii) to provide for and supervise the residence, health, discipline and the well-being of the students of the Institute.

(ix) to create teaching, administrative, technical, ministerial and other posts under the Institute other than the post of Director and to make appointments thereto provided that the posts so created are in the cadre and scales of pay as approved by the government of India from time to time. The appointment to the post of Director shall be made with the approval of the Central Government on such terms and conditions as may be decided by the Central Government. However, proposals relating to emoluments structure i.e. adoption of pay scales, allowances and revision thereof and creation of posts of which the maximum of the pay scale exceeds Rs.4,500/- p.m. would need the prior approval of the Government of India.

...

(xv) to consider and pass such resolutions on the annual report, the annual accounts and the financial estimates of the Society or the Institute as it thinks fit, such annual report, annual accounts and financial estimates along with the resolution passed thereon by the Board being submitted to the Central Government.

(xvi) to make, adopt, amend, vary or rescind from time to time with the prior approval of the Central Government Bye-laws for the regulations of, and for any purpose connected with the management and administration of the affairs of the Institute and for the furtherance of its objects:

(xvii) ...

(xviii) to perform such additional functions and to carry out such duties as may from time to time be assigned to it by the Central Government.

(xix) in the event of disagreement between representative of the Ministry of Finance and the Chairman of the Governing Body of the Institute on the financial matter beyond the delegated powers of the Ministry/Department of Govt.of India, the matter may be referred to the Ministry for taking a final decision.

... ..

13. (i) *The Board shall ordinarily meet once in every three months provided that the Chairman may, whenever he thinks fit on a written requisition of not less than four members call for a special meeting. Not less than fifteen days notice shall be given for every meeting of the Board and a copy of the proceedings of every meeting shall be furnished to the Central Government as soon as practicable after the Meeting.*

(ii) to (vi) ...

16. The members of the Society, Board or of any Committee appointed by the Society or the Board shall not be entitled to any remuneration from the Society or the Board; but non-official members of the Society, the Board or any Committee appointed by either of them shall be paid by the Society such travelling and daily allowances as may be provided for in the Bye-laws to be made in the behalf in respect of any journeys undertaken by them for attending the meetings of the Society, the Board or the Committee of in connection with any other business of the Society, the Board or the Committee as the case may be, Travelling and daily allowances in respect of the official members for the journeys undertaken by them for similar purpose shall be borne by the Central Government.
17. ...
18. Article 3(ix)- The Accounts of the Society shall be audited annually by the Comptroller and Auditor-General of India or by any person authorised by him in this behalf and any expenditure incurred in connection with such audit shall be payable by the Society to the Comptroller and Auditor General of India.
The Comptroller and Auditor-General of India, and any person appointed by him in connection with the audit of the accounts of the Society shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government Accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other necessary documents and papers.

The results of the audit shall be communicated by the Auditor to the Governing Body of the National Institute of Industrial Engineering who shall submit a copy of the Audit Report alongwith its observations to the Government of India, Ministry of Education and to the Society. The Auditor shall also forward a copy of the Report direct to the Government of India in the Ministry of Education.

19. (i) The Board shall submit annually, within six months after closing of the previous year, a report on the working of the Institution during the previous year together with an audit report including an audited statement of accounts showing the receipts and payments during the previous year both in English and Hindi to Government of India through the administrative Ministry.
- (ii) The Society shall submit to the Central Government the budget estimates for every financial year by such date as may be fixed by the Central Government in this behalf.

...

9. From the Memorandum of Association and Rules and the communications relied upon by the learned Counsel for the Petitioner, it is seen that -

- i. The Petitioner since inception is fully financed by the Government of India and is under the Ministry of Human Resources, Higher Education, Government of India. The land of the Petitioner was acquired from Indian Institute of Technology, Mumbai for the purpose of setting up the academic activities by the Government of India.

- ii. The governing body is the Board of Governors which consists of 21 members, out of whom 14 are appointed or nominated by the Central Government, who in turn appoint/nominate 7 members. The Director and Registrar of the Petitioner-Institute are ex-officio members.
- iii. The Rules for the conduct of affairs of the Petitioner cannot be amended except with the approval of the Central Government.
- iv. The annual statement of accounts and balance sheet are required to be in such form as prescribed by the Central Government.
- v. The Central Government is empowered to take over the administration and assets of the Petitioner if it is satisfied that the Petitioner is not functioning properly.
- vi. Upon winding up or dissolution of the Petitioner, the property of the Petitioner is to be dealt with in such a manner as may be determined by the Central Government.
- vii. The Central Government sanctions and sets the limits of the expenditure after the annual budget estimates are prepared by the Board of the Petitioner

- viii. The Central Government prescribes the rules and regulations for the admission of the students to the various courses of study in the Petitioner Institute.
- ix. The posts created are required to be in the cadre and scales of pay as approved by the Central Government. The adoption of pay scales, allowances and revision thereof and creation of posts, if the pay scale exceeds Rs. 4,500/- requires the prior approval of the Central Government. It is not disputed that the pay scales of the Petitioner's employees are at par with the employees of the Central Government.
- x. Prior approval of the Central Government is necessary to amend or vary the Bye-laws/Rules for regulating the management and administration of affairs of the Petitioner.
- xi. Additional functions and duties as may be directed by the Central Government are required to be carried out by the Board of the Petitioner.
- xii. In case of any disagreement between the representative of the Ministry of Finance and the Chairman of the Board (who is also appointed by the Central Government) on any financial matter beyond the delegated powers of the Ministry, the matter is required to be referred to the Ministry for taking a final decision.

- xiii. A copy of the proceedings of every meeting of the Board is required to be furnished to the Central Government.
- xiv. The members of the Petitioner or Board or any Committee appointed by the Petitioner or the Board are not entitled to any remuneration from the Petitioner or the Board and are only entitled to travelling and daily allowance for the meetings undertaken by them which is borne by the Central Government. Only non-official members of the Petitioner, the Board or the Committee appointed by the Board are to be paid by the Petitioner for travelling and daily allowances for the meetings.
- xv. The accounts of the Petitioner are audited annually by the Comptroller and Auditor General of India or any person authorized by him and a copy of the Audit Report is also required to be furnished by the Auditor to the Government of India in the Ministry of Education.
- xvi. The Board is required to submit an annual Report on the working of the Petitioner including audit Report and audited statement of accounts and submit the budget estimates for every financial year by such date as fixed by the Central Government.

10. In view of what is stated above, we find that the affairs of the Petitioner are completely controlled by the Central Government. The nature and degree of control the Central Government exercises on the Petitioner leaves no manner of doubt that it is being carried on under the authority of the Central Government. The Petitioner Institute is being run as a delegate of the Central Government. If the Central Government does not appoint/nominate the members of the Board of Governors, which is the governing body in charge of administration and management of the Petitioner, we are unable to really see how the Petitioner would function. It also needs to be borne in mind that the Director and the Registrar of the Petitioner Institute are ex-officio members. In the impugned order of the Industrial Court, however, there is hardly any discussion on Memorandum of Association and the Rules of the Petitioner. In our view, the Industrial Court clearly erred in coming to the conclusion that the appropriate Government in relation to the Petitioner was the State Government. Analysis of the judgments relied upon by the learned Counsel is not really necessitated, in view of the decision of the 5-Judge Constitution Bench of the Supreme Court in **SAIL's** case which inter alia holds that the question whether the undertaking is being carried on under the authority of the Central Government is to be ascertained on the facts and circumstances of each case. It may however be stated that in **Tata Memorial Hospital**

Workers Union (supra), which is the only judgment relied upon subsequent to **SAIL's** case, it was observed in paragraph 79 as follows:

“79. It is material to note that until the present litigation, neither the Central Government nor Dorabji Tata Trust or even the Governing Council of the first respondent ever disputed the application of the MRTU Act to the first respondent establishment. Prior to the applications leading to the present appeal, Respondent 1 has also filed complaints under the MRTU Act. Neither the appellant nor the second respondent rival Union ever disputed the application of the Act. In fact, the first respondent has in a way, by its own conduct acquiesced into the application of the Act, and the appellant Union has been recognised under the Act right from 1985.”

11. Though not relevant for the purposes of the present Petition, it is required to be noted that with effect from 15 September 2010 “autonomous bodies owned and controlled by the Central Government” are also included in the definition of section 2(a)(i) and for which the appropriate Government is a Central Government in relation to an industrial dispute.

12. In view of the aforesaid discussion, we hold that it is the Central Government which is the appropriate Government in relation to an industrial dispute concerning the Petitioner. Consequently, the provisions of the MRTU & PULP Act would not apply and the Application of the Respondent No.1-Union would not be maintainable.

13. In the result, the Petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

(SMT. DR. SHALINI PHANSALKAR-JOSHI J)

(A.A. SAYED J)