

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25-10-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12931 of 2019 and 26995 of 2009

And

W.M.P.Nos.13094 and 29283 of 2019 and M.P.No.1 of 2009

CMRL Employees Union,
Represented by its General Secretary,
T.Senthil Kumar,
No.16, 18th Street,
Sakthi Nagar,
Nerkundram,
Chennai-600 107.

.. Petitioner in WP 12931/2019

Chennai Metro Rail Limited,
11/6, Seethammal Road,
Alwarpet,
Chennai-600 018

Represented by its Mr.N.K.Kumar, I.E.S.,
Officer on Special Duty.

..Petitioner in WP 26995/2009

vs.

1.The Ministry of Housing and Urban Affairs,
Represented by its Secretary,
Nirman Bhawan,
Maulana Azad Road,
New Delhi - 110 011.

2.The Ministry of Labour and Employment,
Represented by its Secretary,
Shram Shakthi Bhawan,
Rafi Marg,
New Delhi - 110 011.

3.The Chief Labour Commissioner (Central),
Ministry of Labour and Employment,
Shram Shakthi Bhawan,
Rafi Marg,
New Delhi - 110 001.

- 4.The Commissioner of Labour,
D.M.S. Campus,
Teynampet,
Chennai-600 006.
- 5.The Deputy Chief Labour Commissioner (Central),
5th Floor, Shastri Bhawan,
Chennai-600 006.
- 6.Chennai Metro Rail Ltd.,
Represented by its Managing Director,
Admin. Building, CMRL Depot,
Poonamallee High Road,
Koyambedu,
Chennai-600 107. .. Respondents in WP 12931/2019

- 1.The Deputy Chief Labour Commissioner (C),
26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.
- 2.The Labour Enforcement Officer (C) IV,
Office of the Deputy Chief Labour Commissioner (C),
"Shastri Bhavan", 5th Floor,
26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.
- 3.CMRL Employees Union,
Represented by its General Secretary,
T.Senthil Kumar,
No.16, 18th Street,
Sakthi Nagar,
Nerkundram,
Chennai-600 107.
(R-3 impleaded vide order of Court
dated 21.10.2019 made in
WMP No.23817 of 2019) .. Respondents in WP 26995/2009

Writ Petition No.12931 of 2019 is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Letter No.M.85(12)/2019-D1 dated 23.04.2019 issued by the fifth respondent and quashing the same and consequently, directing the fifth respondent to initiate conciliation proceedings based on the petitioner Union's notice of strike dated 22.04.2019.

Writ Petition No.26995 of 2009 is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition, prohibiting the first and second respondents from implementing the provisions of Contract Labour (Regulation and Abolition) Act, against the petitioner.

For Petitioner in WP 12931/19 : Mr.N.G.R.Prasad for
Mr.K.Elango

For Petitioner in WP 26995/09 : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondents-1to3&5
in WP 12931/19 : Ms.R.Durga Rani

For Respondent-4 in WP 12931/19: Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-6 in WP 12931/19: Mr.Sanjay Mohan for
M/s.S.Ramasubramaniam
and Associates.

For Respondents-1&2 in WP
26995/09 : Mr.V.T.Balaji,
Central Government
Standing Counsel.

For Respondent-3 in WP
26995/09 : Mr.N.G.R.Prasad for
Mr.K.Elango.

C O M M O N O R D E R

The lis on hand (WP No.12931 of 2019) is filed to quash the order passed by the fifth respondent in proceedings dated 23.04.2019 and to direct the fifth respondent to initiate conciliation proceedings based on the petitioner-Union's notice of strike dated 22.04.2019.

2. The writ petitioner in WP 12931 of 2019 is the CMRL Employees Union represented by its General Secretary. The sixth respondent/Chennai Metro Rail Limited, ten years back filed WP No.26995 of 2009, challenging the show cause notice issued to the Chennai Metro Rail Limited under The Contract Labour (Regulation and Abolition) Act, 1970 by the fifth respondent and on the ground that only Labour Authorities of the State Government have the jurisdiction. Thus, the writ petitioner-Union filed WP No.12931 of 2019, raising the issue whether the Chennai Metro Rail Limited and the Union will come under the State Authorities of the Labour Department or the Ministry of

Labour and Employment, Government of India.

3. The earlier show cause notice issued by the Central Labour Department was challenged by the Chennai Metro Rail Limited and the current order dated 23.04.2019, issued by the Deputy Chief Labour Commissioner (Central) is under challenge in WP No.12931 of 2019. Thus, the common issue raised is that, in respect of the workmen serving in the Chennai Metro Rail Limited whether the State Labour Department has got jurisdiction or the Ministry of Labour and Employment, Government of India, is having the jurisdiction and before which authority these workmen have to raise their disputes, grievances etc.

4. On account of this confusion, the CMRL Employees Union filed WP No.12931 of 2019, challenging the order dated 23.04.2019, which states that the Central Labour Commissioner is not in a position to entertain conciliation proceedings on the strike notice dated 22.04.2019, due to the operation of stay granted by this Court in WP No.26995 of 2009 filed by the Chennai Metro Rail Limited against Deputy Chief Labour Commissioner (Central), Chennai.

5. The short facts required to be considered are that out of 248 permanent employees of the Chennai Metro Rail Limited, 247 employees joined together and formed the writ petitioner-Union on 01.10.2018. On 22.10.2018, the writ petitioner-Union sent a letter to the sixth respondent, seeking appointment. The writ petitioner-Union is a registered Union under the Trade Union Act, 1926, with the Registration No.516/TVR. On 21.10.2018, the writ petitioner-Union gave a representation to the sixth respondent, listing out the grievances and demands of the employees. On 29.11.2018, the writ petitioner-Union sent a letter to the sixth respondent, expressing their grievances over outsourcing the position of Station Controllers/Station In-charge.

6. The sixth respondent issued orders of suspension to all the seven Office Bearers of the writ petitioner-Union on 03.12.2018 and consequently, memorandum of charges were issued against the seven Office Bearers of the writ petitioner-Union on 10.12.2018. All the seven Office Bearers filed writ petitions, challenging the order of suspension on 12.12.2018. Under these circumstances, the notice of strike was given by the writ petitioner-Union, which was sent to the second respondent and DCL-II on 24.01.2019. On 08.02.2019, ACL-II issued the notice of conciliation. Similar notice was issued again on 12.02.2019. The sixth respondent, Chennai Metro Rail Limited filed a civil suit in O.S.No.1394 of 2019 on 04.03.2019 and obtained an order of

injunction, restraining the President and the Vice President from interfering with the functioning of the sixth respondent Chennai Metro Rail Limited.

7. On 28.03.2019, a memo was issued to the working President and other Office Bearers. The President of the writ petitioner-Union filed I.A.No.3 of 2019 in O.S.No.1394 of 2019, seeking rejection of the plaint in O.S.No.1394 of 2019. Again a memo was issued to the working President by the sixth respondent on 08.04.2019 and thereafter on 22.04.2019, notice of strike was given by the writ petitioner-Union, which was sent to the fifth respondent also. On 23.04.2019, ACL-II issued notice for conciliation. On the same day, the fifth respondent issued impugned letter to the writ petitioner-Union to seek the remedy before the State Labour Authorities. Thus, the writ petitioner-Union is constrained to move WP No.12931 of 2019, challenging the action of the fifth respondent, directing the writ petitioner to go before the State Labour Authorities for the purpose of adjudication of the issues.

8. The main issue raised by the writ petitioner in WP No.12931 of 2019 is that whether the Chennai Metro Rail Limited is under the pervasive authority of the Central Government or the State Government.

9. The learned counsel appearing on behalf of the writ petitioner made a submission that the sixth respondent/Chennai Metro Rail Limited is a Joint Venture Company of the Government of India and the Government of Tamil Nadu administered by the Board of Directors, of which the first respondent is the Chairman. A detailed project report was prepared by the Delhi Metro Rail Corporation, which was approved by the State Cabinet on 07.11.2007 and the project was executed with the financial assistance of Japan International Cooperation Agency offered in November 2009.

10. In respect of the contentions of the sixth respondent/Chennai Metro Rail Limited, the petitioner states that the definitions of 'Railway Company' and 'Railway Administration' are totally irrelevant for deciding the issue whether the Central Government is the appropriate Government or not in WP No.12931 of 2019. In this regard, the petitioner has opposed the judgment cited by the sixth respondent in the case of Steel Authority of India Limited and others vs. National Union Waterfront Workers and others [(2001) 7 SCC 1] and the judgment says that the Central Government is the appropriate Government if the particular industry is carried on or under the authority of the Central Government, which is related to the lis

on hand i.e. WP No.12931 of 2019.

11. Referring the provisions of the Metro Railways (Operation and Maintenance) Act, 2002 would show that the provisions refers only to the Central Government. The said Act of the year 2002 is the creation of the Act of Parliament. A plain reading of the provisions of the Act, reveals that the Central Government is mentioned in many of the provisions and therefore, it is to be construed that the Central Government is the competent authority. Chapter II of the Act empowers the Central Government to issue notifications constituting such Railways. Section 4 speaks of the General Manager, being appointed by the Central Government and the General Superintendence and control being vested with the General Manager. Section 7 states that the Central Government can appoint the Commissioner of Metro Rail Safety. The Commissioner has to function under the administrative control of the Chief Commissioner of Railways Safety. Section 9 in Chapter IV says that the Commissioner is subject to the control of the Central Government. The Annual Report of the Metro Railways has to be placed before the Parliament under Section 13. Chapter V of Section 14 clearly states that 'The Metro Railway in the (National Capital Region, Metropolitan City and Metropolitan Area) shall not be opened for the public carriage of passengers except with the previous sanction of the Central Government.

12. From Sections 14 to 22, all the provisions speak about the Central government. It is clear that Metro Railway is functioning only under the control of the Central Government. Moreover, respondents 2, 3 and 5 in their common counter-affidavit have all stated that the Central Government is the appropriate Government.

13. Relying on all these provisions and other statements, the learned counsel for the writ petitioner-Union states that the sixth respondent/Chennai Metro Railway is covered by (1) The Metro Railways (Operation and Maintenance Act), 2002; (2) The Metro Railways (Construction of Works) Act, 1978; (3) The Metro Railway Amendment Act, 2009; and (4) The Metro Railways General Rules, 2013 (notified on 18th April, 2013 by the first respondent) include "Rules applying to Metro Railway Employees Generally" (Chaper-II). These General Rules are applicable to all Metro Railways in the country, including the sixth respondent, except Kolkata Metro Railway.

14. The Technical Standards approval is done by the Ministry of Railways and the Safety Certification is done by the Commissioner for Metro Rail Safety appointed under Section 5 of

the Railways Act, 1989.

15. The learned counsel for the writ petitioner solicited the attention of this Court regarding the provisions of the Metro Railways (Operation and Maintenance) Act, 2002. A reference was made to Chapter-I, sub-section (1)(f) of Section 2, which provides "Government Metro Railway" means a "Metro Railway owned by the Central Government". Chennai Metro Railway is a "Government Metro Railway". Chapter-II deals with "Government Metro Railway administration". Chapter-II Section 3 stipulates that the Central Government has the sole authority to constitute Metro Railway in National Capital Region, Metropolitan City and Metropolitan area. Section 4 stipulates that the Central Government shall by notification appoint the General Manager with whom shall vest the general superintendence and control of the Metro Railway. Chapter IV Section 7 contemplates that the Central Government may appoint the Commissioners of Metro Rail Safety, who shall function under the Chief Commissioner of Metro Rail Safety appointed under Section 5 of the Railways Act, 1989. Chapter V Sections 14 to 22 provide that the Metro Railway cannot be opened except with the previous sanction of the Central Government. The powers of the Central Government and the officials appointed by it to sanction, open, close, re-open, suspend the operation of Metro Railway and to make relevant Rules are laid out in this Chapter.

16. The learned counsel for the petitioner-Union cited the Railways Act 1989 with reference to the Industrial Disputes Act, 1947, more specifically, Section 2(a)(i) of Industrial Disputes Act, 1947, stipulates that the Central Government is the appropriate Government 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.

17. With reference to the pleadings, the learned counsel for the petitioner-Union states that the members of the writ petitioner-CMRL Employees Union were appointed by the sixth respondent through selection methodology comprised of four stages namely, (1) Online Test; (2) Psychometric Test; (3) Proficiency in Tamil followed by (4) Medical Examination. All the permanent employees underwent the examinations were issued with the appointment orders. The employees were on probation for a period of two years, including the period of training. The employees underwent Intensive Training at Delhi Metro Rail Corporation Training Institute, New Delhi for a period of four months. After passing the various Certification Tests conducted

by the DMRC Training Institute, the members of the petitioner-Union were issued with Certificate of Competency by CMRL. On successful completion of training, the employees were posted as Station Controllers/Train Operators/Junior Engineers and Technicians. In the first phase, the CMRL has completed its work of 45 kilometers. There are 14 elevated stations and 20 underground stations, which are operational. In all the 34 stations, the members of the writ petitioner-Union are working as Station Controllers. Many of them have the experience of operating the trains (Train Operator) for a period of five years. At present, all the permanent employees are employed as Station Controllers/Traffic Controllers/Junior Engineers/Technicians.

18. The learned counsel for the petitioner further urged this Court that the sixth respondent is a Joint Venture Company of the Government of India and the Government of Tamil Nadu, administered by a Board of Directors of which the first respondent is the Chairman. A detailed project report was prepared by the Delhi Metro Rail Corporation, which was approved by the State Cabinet on 07.11.2007 and the project was executed with the financial assistance of Japan International Cooperation Agency offered in November 2009.

19. The sixth respondent/Chennai Metro Rail Limited is covered by the Metro Railways (Operation and Maintenance) Act, 2002, the Metro Railways (Construction of Works) Act, 1978 and the Metro Railway Amendment Act, 2009. The technical standards approval is done by the Ministry of Railways and the Safety Certification is done by the Commissioner of Metro Rail Safety. The Metro Railways General Rules 2013, which were notified in February 2013 by the first respondent, include Rules applying to Metro Railway Employees Generally (Chapter-II). These General Rules are applicable to all Metro Railways in the country, including the sixth respondent, except Kolkata Metro Railway.

20. This being the factual circumstances as well as the legal provisions applicable to the sixth respondent by issuing impugned letter, which is in complete contravention of the stand taken in the counter statement filed in WP No.26995 of 2009, the first respondent has acted in an arbitrary manner. The fourth respondent officials are directing the writ petitioner-Union orally to go before the fifth respondent stating that they are the appropriate authority. The petitioner-Union, under these circumstances, were unable to approach either the fourth respondent or the fifth respondent and constrained to move WP No.12931 of 2019.

21. WP 26995 of 2009 relates to Contract Labour (Regulation and Abolition) Act, 1970, where the sixth respondent was served with the show cause notice issued by the fifth respondent, which was challenged on the ground that the fourth respondent is the appropriate authority under the Act. The fifth respondent has categorically stated in the counter statement filed in April 2010 that they are the appropriate authority. The Metro Railways General Rules, 2013, which came into force subsequently, also states that the Central Government is the authority. Under these circumstances, the petitioner-Union is unable to redress their grievances by establishing their legal right in the manner known to law.

22. The learned counsel for the writ petitioner cited a letter dated 30.08.2019, in which Kochi Metro Rail Limited (KMRL) has given a reply letter dated 30.09.2019, by stating that the appropriate Government with respect to the industrial Dispute as Central Government. The Legal Forum in respect of labour related issues as Assistant Commissioner of Labour (Central). The Kochi Metro Rail Limited is also a Joint Venture of Government of India and Government of Kerala, administered by the Board of Directors in which the first respondent is the Chairman. Relying on all these, the petitioner contend that the appropriate Government under Section 2(a) of the Industrial Dispute Act, 1947 is the Central Government. Thus, after declaring the Central Government to be the appropriate Government, the writ petitioner-Union prays that suitable directions are to be issued permitting the writ petitioner-Union to seek remedy before the Central Government.

23. The learned counsel appearing on behalf of the sixth respondent disputed the contentions raised on behalf of the writ petitioner-Union in entirety. To substantiate their contentions, the learned counsel for the sixth respondent/Chennai Metro Rail Limited contended that the Government of Tamil Nadu commissioned the feasibility study in 2003 to assess the travel demand and to identify and prioritize the metro rail corridors in Chennai metropolitan area. Chennai Metro Rail Limited is a Special Purpose Vehicle (SPV) for implementing the Chennai Metro Rail Project incorporated on 03.12.2007 under the Companies Act, 1956.

24. The Government of India, Ministry of Urban Development in its letter dated 18.02.2009 has conveyed the administrative approval for implementing the projects. Consequent on participating of Government of India in the project, CMRL was restructured as Joint Venture (SPV) with effect from 04.06.2009.

25. The sixth respondent/Chennai Metro Rail Limited is a Joint Venture Company incorporated under the Companies Act, 1956 and the Company is a Limited one. The Chennai Metro Rail Limited had formed for the purpose of implementation of Chennai Metro Rail Project. The project is funded by the Government of India and the State Government by way of equity contribution and subordinate debt (Government of India - 20%, Government of Tamil Nadu - 20.78% and the balance 59.22% met from the loan assistance from Japan International Cooperation Agency), details of which are given below:-

S.No.	Particulars	GoI	GoTN	JICA	Total
1.	Equity	2190 (15.00%)	2190 (15.00%)	-	4380 (30.00%)
2.	Subordinate Debt.	730 (5.0%)	844 (5.78%)	-	1574 (10.78%)
3.	Senior Term Debt (PTA)*	-	-	8646 (59.22%)	8646 (59.22%)
4.	Grand Total	2920 (20.00%)	3034 (20.78%)	8646 (59.22%)	14600 (100.0%)

Board of Directors:

S.No.	Name of the Director	Designation
1.	Shri Durga Shanker Mishra, IAS	Secretary HUA Ministry of Housing & Urban Affairs, GoI
2.	Yet to nominate	Officer on Special Duty and Joint Secretary Ministry of Housing & Urban Affairs, GoI
3.	Shri Sunil Mathur	Director (Rolling Stock & Systems), Maharashtra Metro Rail Corporation Ltd., Nominee Director GoI
4.	Shri D.Radhakrishna Reddy	Director (Projects & Planning), Bangalore Metro Rail Corporation Limited, Nominee Director GoI
5.	Shri Jaideep, IRSEE	Executive Director - Electrical Engineering (G), Railway Board, Ministry of Railways, Nominee Director GoI

S.No.	Name of the Director	Designation
6.	Shri Pankaj Kumar Bansal, IAS	Managing Director, Chennai Metro Rail Limited, Nominee Director GoTN
7.	Dr.T.V.Somanathan, IAS	Additional Chief Secretary to Government, Special Initiatives Department, Nominee Director GoTN
8.	Shri S.K.Prabakar, IAS	Principal Secretary to Government, Highways and Minor Ports Department, Nominee Director GoTN
9.	Shri S.Krishnan, IAS	Principal Secretary to Government, Finance Department, Nominee Director GoTN
10.	Shri G.Prakash, IAS	Commissioner, Greater Chennai Corporation, Nominee Director GoTN
11.	Smt Uma R.Krishnan	Independent Director, Chennai Metro Rail Limited
12.	Smt Usha Sankar	Independent Director, Chennai Metro Rail Limited
13.	Smt.Sujatha Jayaraj	Director (Finance), Chennai Metro Rail Limited
14.	Shri Rajeev Narayan Dwivedi	Director (Projects), Chennai Metro Rail Limited

26. In the light of the above facts, the learned counsel for the Sixth Respondent submitted that the State Government would be "appropriate Government" for the purposes of Industrial Disputes Act, 1947. Section 2(a) of the Industrial Disputes Act, which reads as under:-

"'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 the Central Government and (ii) in relation to any other industrial dispute, the State Government."

27. The words 'appropriate Government' found in Section 2(a) contemplates the Central Government to be the appropriate Government in cases where the industry is 'carried on by' or 'under the authority of the Central Government'. Chennai Metro Railway Limited is not actually run by the 'Central Government' and therefore, this portion of the Section has no application. Chennai Metro Railway Limited is a Company registered under the Companies Act, 1956 and therefore, it is an activity carried on by a company. Therefore, it could be said that it is not an industry that is 'carried on by' or 'under the authority of the Government of India'.

28. The learned counsel appearing on behalf of the sixth respondent relying on the judgment of the Hon'ble Supreme Court in the case of Steel Authority of India Limited and others vs. National Union Waterfront Workers and others [(2001) 7 SCC 1], the relevant paragraphs 30 and 39 are extracted as under:-

"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.

39. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to 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."

The judgment of the Hon'ble Supreme Court of India, cited supra, could be said to be a complete answer to the question as to what the meaning of the words 'under the authority of Central Government' means. The interpretation available from the judgment excludes the Central Government so far as CMRL is concerned.

29. The question regarding whether Chennai Metro Railway Limited is a Railway Company?, if it is a Railway Company as contemplated by the Industrial Disputes Act, 1947, then the Central Government irrespective of who carries on the business of the Railway Company would be the 'appropriate Government'.

30. Section 2(o) of the Industrial Disputes Act defines 'Railway Company' means Railway Company as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890); and by reference by incorporation it falls back upon the definition of 'railway company' as defined in Section 3 of the Indian Railways Act, 1890.

31. The definition of the phrase 'Railway Company' under the 1890 Act is extracted as under:-

"Section 3(4) 'Railway' means a Railway or any portion of a Railway, for the public carriage of passengers, animals or goods, and includes -

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a Railway;

(b) all lines of rails, sidings, or branches worked over for the purposes of, in connection with, a Railway;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a Railway; and

(d) all ferries, ships, bats and rafts which are used on inland waters for the purposes of the traffic of a Railway and belong to or are hired or worked by the authority administering the Railway."

32. According to Section 3(5) 'Railway Company' includes any persons, whether incorporated or not, who are owners or lessees of a Railway or parties to an agreement for working a Railway. From the above, it could be said that Chennai Metro Rail Limited fulfills this definition.

33. However, with the march of law, the 1890 Act stood replied by the Indian Railways Act, 1989 by virtue of Section 200 thereof. The Indian Railways Act, 1989 defines Railway Company, which reads as under:-

"Section 2(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery,

roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland -waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include-

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation.

Section 2(32) "railway administration", in relation to-

(a) a Government railway, means the General Manager of a Zonal Railway; and

(b) a non-Government railway, means the person who is the owner or lessee Of the railway or the person working the railway under an agreement. "

Thus, it would be noticed that the definitions of 'railway' under the 1890 Act and the 1989 Act are almost para materia.

34. However, the advent of the Metro Railways (Operation and Maintenance) Act, 2002, a Special Act to deal with Metro Railways alters the position in law significantly. A distinction has been made in this Act between 'Metro Railway' and 'Railway' by virtue of the definitions given to each of these words in this Act. Section 2(i) of the Metro Railways (Operation and Maintenance) Act, 2002, defines 'Metro Railway', which reads as under:-

"(i) "metro railway" means rail-guided mass rapid transit system having dedicated right-of-way, with steel wheel or rubber-tired wheel coaches, but excluding tramways, for carriage of passengers, and includes-

(A) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,

(B) all rails tracks, sidings, yards or

branches worked over for the purposes of, or in connection with, a metro railway

(C) all stations, offices, ventilation shafts and ducts, warehouses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with, a metro railway.

Section 2(p) 'Railway' shall have the meaning assigned to it in Clause (31) of Section 2 of the Railways Act, 1989 (24 of 1989)".

Therefore, the Special Act makes a distinction between 'Railway' and 'Metro Railway'.

35. The very object of the Metro Railways Act is to regulate the operation and maintenance of Metro Rail Activity. The engagement of labour would fall under 'operation' and possibly also under 'maintenance'; the two activities that are contemplated by the objects of the Metro Railways Act. Therefore, it could be said that by necessary intendment as can be seen from the statutory developments that have taken place that the word 'railway' it is distinct from 'Metro Railway'. While 'Metro Railway' may partake of the characteristics of 'railway', it is actually not 'Railway' but 'Metro Railway'.

36. Therefore, when Section 200 of the 1989 Act, is looked at, one would notice that by virtue of the repeal of the 1890 Act and the introduction of Indian Railways Act, 1989, the legal position has been significantly altered. The alternation arises on account of the introduction by the Metro Railways (Operation and Maintenance) Act, 2002, a special enactment to deal exclusively with 'Metro Railways' as opposed to 'Railways'.

37. Where Metro Railways to be included has to be specifically spelt out in the Industrial Disputes Act and fall back upon the definition of 'Railway Company' under the provisions of a repealed Act would no longer be applicable as a result of the advent of the Metro Railway Act.

38. The Special Act would exclude the General Act and, therefore, wherever by intendment or by reference by incorporation/ extraction 'Railway Company' would not reopen 'Metro Railway', because Metro Railways no longer 'Railway Company' within the meaning of either the 1890 Act or the 1989 Act, which deals essentially with the Railways covered by Indian Railways Act and not Metro Railways Act. Merely running on 'Rails' is no longer relevant to constitute 'Metro Railway' into

a 'Railway Company'.

39. Chennai Metro Railway Limited is incorporated under the Companies Act and not under the Metro Railway Act. Once Chennai Metro Railway Limited Company comes into being it is then regulated in so far as its functioning is concerned by the Metro Railway Act.

40. The supervision by the Central Government is in relation to see that all Metro Railways comply with the requirements framed by the Statute but has nothing to do with the formation or creation of the Metro Railway.

41. In fact, Section 2(1) of the Metro Railways Act, contemplates Private Sector running owning and running a Metro Railway System just as the same Act in Section 2(f) contemplates the Government itself owning and running a Metro Railway System. Enforcement of safety measures and regulations in the interest of the public would constitute supervision of conditions on which a Metro Railway can function but would not create the Metro Railway Company.

42. As per the Memorandum of Association of CMRL, the main objects to be pursued by CMRL on its incorporation are to plan, design, develop, construct, maintain, operate and finance mass transit and other urban transport and people movers system of all types and descriptions in the State of Tamil Nadu and to carry on business relating to construction, maintenance and operations of mass transit and other urban transport and people movers system of any kind and description etc.

43. Ministry of Urban Development, Government of India vide its letter dated 26.04.2006 has informed the Chief Secretaries of State Government regarding gauge for Metro Rail System and legislative competence for the construction, operation and maintenance of such system that Urban Transport being a State subject, legislation for operation and maintenance of Metro Rail Systems falling within the jurisdiction of a Municipal are could be enacted by the State Government concerned.

44. As per Clause No.12.16 of the Memorandum of Understanding (MoU) between Government of India, Government of Tamil Nadu and CMRL on 15.02.2011, Government of Tamil Nadu to finance each losses, if any, and capital expenditure during the operational phase from its own resources in case the same cannot be provided by CMRL. Similarly, as per Clause No.12.18 of the said Memorandum of Understanding, Government of Tamil Nadu to bear the cost, if any, of procurement of additional rolling

stock in the second year of operation, if the same cannot be provided by CMRL.

45. As per Clause No.D(i) Metro Rail Policy, 2017 issued by the MoHUA, GoI, identified Metro Rail Project for central assistance will have to be mooted by the State Government as the 'Urban Development' is a State subject in the Constitution. Additionally, as per Clause No.D(iv)(d) of the said policy, the State Government shall commit to provide required support to Metro Rail Companies to ensure financial sustainability during operations.

46. In the meeting of the Heads of all Metros in India, held on 17.04.2015 under the Chairmanship of the Additional Secretary, GoI, MoUHA, it has been stated that the conditions of sanction of Metro Rail Project stipulates that bearing of loss in the Company, if any and repayment of the loan to the Company is the State Government responsibility. Thus, the pay structure should be in conformity with the concerned State Government pay scale and other local factors.

47. CMRL is obtaining the Registration Certificate (RC) from the Commissioner of Labour, Department of Labour, Government of Tamil Nadu and Directorate of Industrial Health and Safety, Government of Tamil Nadu under Contract Labour (Regulation and Abolition) Act, 1970, interstate migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 for various contract works and not from the Assistant Labour Commissioner (Central).

48. The sixth respondent, being a Company, contended that the State Government is the appropriate Government under the Industrial Disputes Act, more specifically, for the purpose of redressal of the grievances, if any, of the writ petitioner-Union.

49. The learned counsel appearing on behalf of the writ petitioner-Union reiterated that the impugned order is in violation of the very spirit of the Metro Railways (Operation and Maintenance) Act, 2002 and therefore, the order impugned is liable to be scrapped and suitable directions are to be issued to the fifth respondent to initiate proceedings based on the notice of strike issued to the writ petitioner-Union on 22.04.2019.

50. The learned counsel appearing on behalf of the sixth respondent/Chennai Metro Rail Limited, replied by stating that admittedly the right of adjudication cannot be denied to the parties concerned. The only endeavour of this Court is to decide which authority is the appropriate Government within the meaning of the Industrial Disputes Act, 1947. Section 2(a)(i) of the Industrial Disputes Act, 1947, enumerates that "the Central Government is the appropriate Government 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.

51. With reference to the above definition enumerated in Section 2(a)(i) of the Industrial Disputes Act, 1947, this Court is of an opinion that the Chennai Metro Rail Limited is not an industry carried on wholly under the authority of the Central Government. Further, it cannot be a Railway Company, within the meaning of the Indian Railways Act, as it is a Metro Railway as rightly contended by the learned counsel for the sixth respondent and such a Metro Railways are constituted by virtue of an independent Statute, the Metro Railways (Operation and Maintenance) Act, 2002. Thus, the Metro Railways will not fall under the definition of Indian Railways. The method of transport may be similar, however, the constitution and operations and maintenance are entirely different. Indian Railways and Metro Railways are two different entities and the constitution of the Metro Railways is absolutely unconnected with the Indian Railways. In this regard also, it is contended that the Metro Railway was incorporated under the Companies Act, 1956 and the Company is a limited one and the project envisages the creation of two corridors under Phase-I. Corridor-I starts from Washermenpet and ends at Airport for a length of 23.1 km and the Corridor-II starts from Chennai Central and ends at St. Thomas Mount for a length of 22.0 km. Thus, the Chennai Metro Rail Limited is a Company incorporated under the Companies Act, 1956 and the Management of the Company is constituted with reference to the provisions of the Madras Railways (Operation and Maintenance) Act, 2002.

52. Let us now consider the provisions of the Metro Railways (Operation and Maintenance) Act, 2002 (Act No.60 of 2002), Section 2(i) defines 'Metro Railways' means "rail-guided mass rapid transit system having dedicated right of way, with steel wheel or rubber tyred wheel coaches, but excluding tramways, for carriage of passengers". Section 3 of the Metro Railways (Operation and Maintenance) Act, 2002 speaks about the constitution of Government Metro Railway. Section 3(1)

stipulates that the Central Government may, for the purpose of efficient administration of a Government metro railway, in the National Capital Region, Metropolitan City and Metropolitan area, by notification, constitute such Railways as it may deem fit. Section 5 of the said Act, stipulates functions of Metro Railway Administration. Section 5(a) states that functions of Metro Railway Administration shall be to maintain and operate metro railway, for public carriage of passengers and (b) stipulates that to engage in any such other activities or perform such other functions as may be considered necessary for the purpose of the operation and maintenance of the Metro Railway. Section 6 speaks about the powers of Metro Railway Administration. Section 7 stipulates the appointment of Commissioner of Metro Railway Safety. Section 14 contemplates Sanction of Central Government to the opening of Metro Railway. The said Section contemplates that the Metro Railway in the Metropolitan City shall not be opened for the public carriage of passengers except with the previous sanction of the Central Government. Section 15 contemplates formalities to be complied with before giving sanction to the opening of Metro Railway. Section 57 provides extent of liability. Accordingly, the Metro Railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation for loss occasioned by the death of, or bodily injury to any person to such extent as may be prescribed.

53. The plain reading of the entire provisions of the Metro Railways (Operation and Maintenance) Act, 2002, reveals that it is in the form of regulation of Metro Railways and it does not contemplate the entire administration by the Central Government. Administration of Metro Railways is one aspect of the matter and regulation the functions for safety, security and to monitor the functioning of the Metro Railways are the another thing. The provisions, undoubtedly, provides power to the Central Government to regulate the administration and functioning of the Metro Railways. However, the Act does not contemplate any direct administration by the Central Government. Controlling mechanisms are provided and such powers are conferred, enabling the Central Government to regulate the administration, so as to ensure public safety and to protect the interest of the public revenue and other aspects of the matter.

54. Thus, the Act does not contemplate direct administration by the Central Government and therefore the mere usage of the word 'Central Government' in the Act employed for the purpose of regulating the Metro Railway Projects cannot be construed as, the Central Government is directly administering the Metro Railway administrations. Admittedly, the Metro Rail

Projects are not administered by the Indian Railways. Metro Rail Projects are independent projects having its own independence with certain special features. The project itself is implemented with the assistance of the Japan International Cooperation Agency.

55. Thus, this Court is of the considered opinion that the Metro Rail Project at Chennai, cannot be construed as a Company administered by the Central Government, so as to arrive a conclusion that the Central Government is the "appropriate Government" within the meaning of Section 2(a)(i) of the Industrial Disputes Act, 1947.

56. The ingredients of Section 2(a)(i) of the Industrial Disputes Act, 1947 is that 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. Therefore, the Central Government is only the regulating authority in respect of the Metro Railways in various Metropolitan Cities across the country as well as in the National Capital and the Railway Metro Projects are implemented independently and by way of separate project.

57. Apart from this, the sixth respondent/Chennai Metro Rail Limited is a Company incorporated under the Companies Act, 1956, The Company was incorporated at Chennai and the functioning of the entire project is within the State of Tamil Nadu, more specifically, in Chennai Metropolitan City. The activities of the sixth respondent/Chennai Metro Rail Limited is not extended beyond the territorial jurisdiction of the Chennai Metropolitan City and within the State of Tamil Nadu.

58. The entire administration as well as the Corporate Office is also situated in the City. This being the nature of constitution and the functioning of the Metro Railway Projects in Metropolitan City with reference to the provisions of the Metro Railways (Operation and Maintenance) Act, 2002, this Court has no hesitation in arriving a conclusion that the Chennai Metro Rail Limited is to be construed as a State Government for the purpose of Section 2(a)(i) of the Industrial Disputes Act, 1947. Thus, the appropriate Government in respect of the sixth respondent/Chennai Metro Rail Limited is concerned, it is the State Government and the State Labour Authorities are empowered to adjudicate the labour issues in connection with the employees of the Chennai Metro Rail Limited.

59. The Indian Railways Act, 1989 defines 'Railway Company'. Section 2(32) of the Act defines 'Railway Administration'. Thus definitions stipulated in the Indian Railways Act, may not be applicable to the Metro Railways (Operation and Maintenance) Act, 2002. The Special Act enacted to deal with the Metro Railways and therefore, the Special Act alone will prevail over the other Statutes. The Metro Railway therefore, cannot be equated with the Railway with reference to the definition stipulated in the Indian Railways Act. A separate definition is also provided under Section 2(i) of the Indian Railways (Operation and Maintenance) Act, 2002. When the Special Act contemplates a separate meaning and the manner in which the Metro Railways are to be administered, maintained and various other regulating mechanisms and controlling mechanisms are provided within the Special Act, then this Court is of an opinion that Indian Railways Act, cannot have any application with reference to the Metro Railway Projects implemented in Metropolitan Cities, more specifically, in Chennai City.

60. The Special Act, namely, Metro Railways Act is enacted specifically for a purpose and object to regulate operations and maintenance of Metro Rail activity in Metropolitan Cities. Admittedly, the Government of India is possessing 20% shares and the Government of Tamil Nadu is having 20.78% shares and the balance 59.22% is met from the loan assistance from Japan International Cooperation Agency. Therefore, one cannot arrive a conclusion that the Central Government is the major shareholder and entitled to take over the administration. Equally, the State is also not having shares more than 50%, so as to arrive a conclusion that they are empowered to administer the entire Metro Railway Projects. Thus, it is the combination of both, wherein major investments are made by Japan International Cooperation Agency, wherein the administration of Metro Railways are constituted by virtue of the Metro Railways Act. The Metro Railways Act does not speak about the complete administration by the Central Government. Contrarily, the entire reading of the Act reveals that the controlling mechanisms and functional regulations are provided to ensure clean administration and to maintain security and safety of the public, who all are travelling in Metro Rails. Thus, this Court cannot come to the conclusion that the Chennai Metro Rail Limited is owned or completely administered by the Central Government, so as to designate the Central Government as the appropriate Government, within the meaning of Section 2(a) of the Industrial Disputes Act, 1947.

61. Contrarily, Chennai Metro Rail Projects are implemented in Chennai Metropolitan City and the Chennai Metro

Rail itself is a Company incorporated under the Companies Act, 1956 and its registered office is functioning at Chennai and the officials of both the Central Government and the State Government have constituted a Board of Administration and the perusal of the list of Board of Directors, it is the combination of both wherein the State Authorities are also in full participation in the administration. Considering the administration set up and the fact that Chennai Metro Rail Limited is a Company incorporated under the Companies Act, 1956 and its Registered Office as well as the entire functioning of the project is within the Chennai Metropolitan City, this Court has no hesitation in coming to the conclusion that the State Government Authorities to be construed as "appropriate Government", within the meaning of Section 2(a)(i) of the Industrial Disputes Act, 1947 for the purpose of entertaining conciliation proceedings and for all further proceedings under the provisions of the Industrial Disputes Act, 1947 and for the purpose of redressing the grievances of the workmen serving in Metro Railways.

62. As far as the impugned order dated 23.04.2019 is concerned, it is nothing but a communication and admittedly, not an order passed on merits. The impugned order states that the fifth respondent is unable to proceed with the conciliation proceedings on account of the interim stay granted by the Hon'ble High Court of Madras in WP No.26995 of 2009. In view of the fact that it is only a communication sent by the fifth respondent expressing their inability to continue the conciliation proceedings, the said order deserves no adjudication as this Court has adjudicated the merits in WP N.12931 of 2019. The issues raised in both the writ petitions are common and therefore, no separate adjudication is required in respect of the grounds raised in WP No.26995 of 2009.

63. This being the factum adjudicated in the aforementioned paragraphs, this Court has no hesitation in coming to the conclusion that the Tamil Nadu State Government Labour Department is the "appropriate Government" within the definition of Section 2(a) of the Industrial Disputes Act, 1947 and accordingly, the competent authorities of the Tamil Nadu State Government Labour Department, are having jurisdiction to entertain the conciliation proceedings and all other proceedings under the provisions of the Industrial Disputes Act, 1947. Thus, the writ petitioner-Union is at liberty to approach the Tamil Nadu State Government Labour Department Authorities for the purpose of conciliation and to redress their grievances by following the procedures and the principles contemplated under the Statute and the Rules in force.

64. If the conciliation proceedings or any other proceedings are now pending before the Tamil Nadu State Government Labour Departmental Authorities, the said proceedings are directed to be restored and the parties concerned are at liberty to continue the proceedings in the manner known to law. In view of the orders passed in this writ petition, the impugned order dated 16.12.2009 issued by the second respondent in W.P.No.26995 of 2009 cannot be given effect to or proceeded with. Thus, the said order also stands quashed.

65. Accordingly, this Court is inclined to declare that the Tamil Nadu State Government Labour Department and its authorities are the "appropriate Government" within the meaning of Section 2(a) of the Industrial Disputes Act, 1947.

66. In the result, WP No.12931 of 2019 and WP No.26995 of 2009 are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

Svn

To

- 1.The Secretary,
Ministry of Housing and Urban Affairs,
Nirman Bhawan,
Maulana Azad Road,
New Delhi - 110 011.
- 2.The Secretary,
Ministry of Labour and Employment,
Shram Shakthi Bhawan,
Rafi Marg,
New Delhi - 110 011.
- 3.The Chief Labour Commissioner (Central),
Ministry of Labour and Employment,
Shram Shakthi Bhawan,
Rafi Marg,
New Delhi - 110 001.

- 4.The Commissioner of Labour,
D.M.S. Campus,
Teynampet,
Chennai-600 006.
 - 5.The Deputy Chief Labour Commissioner (Central),
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 - 6.The Managing Director,
Chennai Metro Rail Ltd.,
Admin. Building, CMRL Depot,
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Koyambedu,
Chennai-600 107.
 - 7.The Deputy Chief Labour Commissioner (C),
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Chennai-600 006.
 - 8.The Labour Enforcement Officer (C) IV,
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- +1cc to Mrs.R.Durgarani, Advocate SR.89584
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+1cc to the Government Pleader SR.90423

W.P.Nos.12931 of 2019 and 26995 of 2009

SVI(CO)
CB(29/11/2019)