



W.P. No. 288/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.08.2023	05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.288 OF 2017

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Ltd.
Mechanical Maintenance – II
Ennore Thermal Power Station
Chennai 600 057.

.. Petitioner

- Vs -

1. The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court, Chennai.

2. A.P.Nageswaran
3. N.Somasundaram
4. A.Senthilkumar
5. G.Muruganandham
6. K.Sathyanarayanan
7. Y.Gnaprakasam
8. S.Sampathkumar
9. K.Venkatesan
10. M.Murugan
11. A.Georgekumar
12. G.Raja



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13. R.S.Sankar
 14. B.Arunachalam'
 15. R.Balasubramaniam
 16. R.R.Sivakumar
 17. R.Srinivasan
 18. J.Anatharam
 19. E.Samson
 20. T.Madraiveeran
 21. K.Subramaniyan
 22. H.Bailen Thomas (Decd.)
 23. G.P.Annadurai
 24. S.Umasivan
 25. V.Slvakumar
 26. M.Ramesh
 27. S.Subramani
 28. M.Ganesh
 29. R.Arulsamy
 30. D.Arul
 31. D.Sivakumar
 32. M.A.Sambathkumar
 33. V.Nethaji
 34. Juliyamagi
 35. Belinda Priyadharshini
 36. Irene Illakiya
- (RR-34 to 36 substituted as LR's of
Deceased R-22 vide order dated
9.12.2021 made in WMP No.19501/2021)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorari calling for the records of the 1st
respondent in I.D. No.66 of 2014 and quash the award dated 5.8.2016.



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For Petitioner : Mr. AnandGopalan, for
M/s.T.S.Gopalan& Co.

For Respondents : Mr. V.Prakash, SC, for
Mr. J.Elumalai for RR-2 to 36

ORDER

Assailing the award passed by the 1st respondent directing reinstatement and regularisation of the services of respondents, who were contract labourers, the present writ petition has been filed on the ground that the 1st respondent has no jurisdiction to entertain the dispute.

2. It is the case of the petitioner that subsequent to the commissioning of Ennore Thermal Power Station by the Tamil Nadu Electricity Board in the year 1971, the Board, vide its proceedings prescribed qualifications for recruitment of Helpers. The said Board Proceedings was challenged in W.P. No.13886 of 1986 and this Court, vide its order dated 10.01.1990, upheld the Board Proceedings against which appeal was filed by the Tamil Nadu Electricity Employees and Contract Workers Union in SLP No.1820 of 1990 before the Apex Court. Vide order dated 10.04.1990, the Supreme Court



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passed order appointing Mr. Justice V.Khalid, former Judge of the Supreme Court to consider the criteria that should be applied to Helpers covered by the judgment of this Court under appeal and to suggest whether any relaxation of qualification of National Trade Certificate/National Apprenticeship Certificate prescribed by the Board should be made in respect of the said Helpers having regard to their experience.

3. It is the further case of the petitioner that the Committee, in addition to the above question relating to prescription of qualification, also went into the question of absorption of the contract workmen represented by the Unions in the services of the Board. Report was filed by Mr. Justice V.Khalid to the effect that there were 18006 contract workmen and they were to be absorbed on or before 31.03.1993. Due to administrative inconveniences and lack of resources, the contract workmen could not be absorbed on time, resultantly, contempt petition was filed before the Supreme Court, in which the Supreme Court directed the Board to give a time schedule within which it would absorb the contract workmen as directed and also directed that till all



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the workmen covered under the report are absorbed, no fresh appointments shall be made.

4. It is the further case of the petitioner that apart from the workmen identified in the report, there were many other persons, who were claiming to be contract workmen and were making a claim for absorption. It is the further case of the petitioner that due to expansion activities, many works were entrusted with contractors and the workmen employed for getting the said jobs completed were not continuously engaged and only in the case of contractors, who were supplying labour, the engagement might have been continuous.

5. It is the further case of the petitioner that by Board's Proceedings dated 20.08.1997, the National Productivity Council, Chennai, was asked to study the work allocation and assessment of manpower on a scientific method in the four thermal power stations and, accordingly, report was filed and after scrutinizing the report of the Chief Engineers, on the basis of the report of the National Productivity Council and considering the number of posts already



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sanctioned and appointments made, the Board issued B.P. No.16 dated 28.04.1999 sanctioning supernumerary posts.

6. It is the further case of the petitioner that the total number of contractor workmen as on 5.1.1998 was to the extent of 9095 in all four Thermal Power Stations put together. On the above, the contract workmen as on 5.1.1998 at the petitioner thermal plant was 1867. The Board decided to identify the contract workmen as on 5.1.1998 who had worked for more than 480 days in the period 6.1.1996 to 5.1.1998 and by BP 17 dated 28.4.1999, guidelines were given as to the manner in which the contract workmen were to be identified for absorption against the supernumerary posts to be created pursuant to the report of the National Productivity Council. Among the contract workmen employed at ETPS as on 5.1.1998, the Committee constituted, identified 749 contract workmen as having worked for 480 days in a period between 6.1.1996 and 5.1.1998

7. It is the further case of the petitioner that in January, 1998 the Board decided to consider the question of absorbing the contract labour after taking



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into account all relevant factors and for that purpose it was decided that no new contract workmen shall be engaged after 5.1.1998. When the manpower requirement was assessed, certain posts requirements were not considered, except for the position of engineers. In such a scenario, the contract workmen claimed absorption, which were forwarded to the Head Office.

8. It is the further case of the petitioner that as per the report of Justice Khalid Commissioner, the workmen were to be absorbed by following the guidelines issued in BP 17 dated 28.4.1999 and as far as the contract workmen working in Distribution Circle, their claim for absorption and regularisation were dealt with separately and not as per BP 17. Thereafter, various contract workmen, who were employed by the petitioner who were paid exgratia payment were absorbed in a phased manner and regularised in service, which process continued till 30.10.1999. Thereafter all other contract workmen working in the premises of the petitioner were stopped. A writ petition was filed by the contract workmen. Out of 1867 contract workmen, 749 were absorbed and the remaining contract workmen ceased to be engaged after



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31.10.1999 and barring the contract workmen, who were absorbed and regularised, the other contract workmen after 31.10.1999 were treated as temporary casuals and were paid daily wages equal to the monthly wage of permanent helper divided by 26. However, insofar as the contesting respondents are concerned, till 30.09.2002, they were paid wages only by the contractors and they were not treated as temporary casual workmen directly engaged by the Board.

9. It is the further case of the petitioner that though 69 contract workmen were identified for absorption, they were not absorbed and as there was no progress in their regularisation, one of the workman filed W.P. No.14144/1999. Some of the other contract workmen filed W.P. No.15266/1999 claiming permanency and the said writ petition was disposed of directing the Board to consider their representation and pass orders. However, no action was taken even inspite of another representation filed and on 30.09.2002, the service of the concerned workmen came to an end. In December, 2013, five contract workmen filed a claim petition purporting to raise an industrial dispute on behalf of themselves and on behalf of 27



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contract workmen, which was taken before the Conciliation Officer, who submitted his report dated 18.7.2014 and a failure report resulted in the reference of the dispute to the 1st respondent for adjudication on 5.8.2014.

10. Upon reference of the dispute, the 1st respondent took up the same in which the petitioner contended that the dispute raised by the 27 workmen could at best be termed only to be individual dispute and cannot be taken as a collective dispute for adjudication and that the dispute of the workmen could not be countenanced. In spite of the documents filed and also the oral evidence of the contesting respondents, the 1st respondent, vide its award dated 5.8.2016 held that the contesting respondents have, through sufficient evidence proved that they were working as contract workmen in the Foal Yard at Jawahar Dock and that their work period was during 1992 and 1994 and it was further held that though the contractors changed from time to time, but the workmen were allowed to continue and that it was not a dispute in their individual capacity but a collective dispute to be considered u/s 2 (k) of the Industrial Disputes Act. Accordingly, the 1st respondent directed the petitioner to absorb and regularise all the workmen concerned in the dispute within two



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months from the publication of the award. Aggrieved by the said award, the present writ petition has been filed.

11. At the outset, learned counsel appearing for the petitioner submitted that the term “*appropriate Government*” defined u/s 2 (a) of the Industrial Disputes Act (for short ‘ID Act’), the State Government alone is the appropriate Government insofar as the parties to the dispute are concerned and, therefore, the reference made by the Central Government is bad in law and the 1st respondent has no jurisdiction to adjudicate the dispute.

12. It is the further submission of the learned counsel that the appropriate Government is to be decided with reference to the employer or the industry of the employer and not the place of work. In the present case, the industry and the employer are the State Government and, therefore, the State Government alone is the appropriate Government to refer any dispute for adjudication.



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13. It is the further submission of the learned counsel that the issue of jurisdiction is a question of law, which can be raised at any time, even in the present writ petition and same not having raised by the petitioner before the Tribunal would not estop the petitioner from raising it before this Court. In this regard, learned counsel placed reliance upon the decision in *P.K.Pillai – Vs – The Burma Shell Oil, Shortage and Distributing Co. of India Ltd. &Anr.* (AIR 1956 Kutch 9) and *Sylvester & Co. –Vs – Their Workman* (2007 (5) AIR Bom R 710).

14. It is the further submission of the learned counsel that the respondents were admittedly not engaged after 30.09.2002 and the present dispute was raised in the year 2013 and reference was made in the year 2014 and there is an enormous delay. However, without advertng to EDxs.M-28, M-32, M-35 and M-36, which were representation of the contesting respondents, which were disposed of, the finding rendered by the Tribunal that there is no delay, is wholly misconceived. In this regard, learned counsel for the petitioner placed reliance on the decision of the Apex Court in *U.P.S.R.T.C. – Vs – Babu Ram* (2006 (5) SCC 433) and *U.P.S.R.T.C. – Vs – Ram*



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Singh (2008 (17) SCC 627), wherein it has been held that mere giving representation wouldn't revive the cause of action.

15. It is the further submission of the learned counsel that there is no explanation for the delay of more than 11 years in raising the dispute and the finding of the Tribunal that the contesting respondents were continuously raising the issue is perverse and not substantiated by any material. The delay in raising the dispute is fatal.

16. It is the further submission of the learned counsel that the dispute has not been referred at the instance of any registered Trade Union, but at the behest of five persons forming a committee and whether the reference is u/s 2 (k) of the ID Act is to be looked into. In this regard, it is the submission of the learned counsel that after the introduction of Section 2 (qq) to the ID Act, only registered Trade Union can maintain an industrial dispute u/s 2 (k) and a reference u/s 2 (k) cannot be made at the instance of individual workmen. To substantiate upon the same, learned counsel for the petitioner placed reliance upon the following decisions of the Apex Court :-



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- i) *B.Srinivasa Reddy – Vs – Karnataka Urban Water Supply & Drainage Board Employees' Association (2006 (11) SCC 731);*
- ii) *Ram Prasad Vishwakarma – Vs – Industrial Tribunal (1961 (1) LLJ 504;*
- iii) *Gujarat Electricity Board – Vs – Hind Mazdoor Sabha (1995 (5) SCC 27)*

17. Alternatively to the submission with regard to raising of dispute by individual workmen, it is the submission of the learned counsel that even if a dispute is to be raised, it could be raised only by a permanent workmen of the petitioner and not by third parties, like the contesting respondents, who are contract workmen and in support of the above contention, the decision in *Steel Authority of India Ltd. – Vs – Union of India (2006 (12) SCC 233)* is pressed into service.

18. It is the further submission of the learned counsel that even according to the contesting respondents, they were not engaged after 2002 and the dispute was raised only in the year 2013 at which point of time, there was no subsisting relationship between the petitioner and the contesting



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respondents and the specific plea in the claim statement itself was not to set aside the alleged disengagement which was by the contractors, which clearly shows that there was no existence of relationship. Therefore, the Tribunal ought not to have adjudicated the dispute.

19. It is the further submission of the learned counsel that the reference is only with regard to regularisation and that being the case, the Tribunal cannot go beyond the reference and consider the question of absorption or disengagement and direct reinstatement. It is the submission of the learned counsel that regularisation would only arise in respect of irregular employment and it cannot be extended to provide for absorption of an employee of a third party.

20. It is the further submission of the learned counsel that the claim is based on BP No.17 dated 28.4.1999 and not a dispute for absorption of contract labour. Either the contesting respondents have to make claim in terms of B.P. No.17 dated 28.4.1999 or for absorption and it cannot hit on all



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sides claiming regularisation in terms of B.P. 17 and also make a claim for absorption.

21. It is the submission of the learned counsel that if the claim of the contesting respondents is on the basis of B.P. No.17 dated 28.4.1999, then it has to be within the framework of the scheme framed by TNEB on its own and the adjudication of the Tribunal should be whether they fulfil the criteria laid down in the BP for absorption. However, the claim of the contesting respondents being only in terms of B.P. No.17 and the reference was only with regard to regularisation, the Tribunal has entirely gone beyond the scope of the reference and addressed the issue for absorption, which is wholly erroneous and impermissible.

22. In fine, it is the submission of the learned counsel that the relief granted by the Tribunal being for absorption, it clearly establishes that the petitioners were not under the employment of the petitioner and, therefore, the order for reinstatement is wholly misconceived and the order passed by the Tribunal is perverse and deserves interference.



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23. Per contra, learned senior counsel appearing for the contesting respondents submitted that the question of raised with regard to the dispute should be collective and not individual by referring to Section 2 (k) of the ID Act has been addressed by the Tribunal in the award, wherein a categorical finding has been rendered that the workmen, four in number then, had formed a committee and to substantiate the same, documents were filed and in a collective manner, the dispute has been raised and, therefore, the stand of the petitioner that the individual workmen cannot raise individual dispute u/s 2 (k) has been well considered by the Tribunal.

24. It is the further submission of the learned senior counsel that the Tribunal has gone into the fact that the service of the contesting respondents came to an end on 30.09.2002, but the dispute was raised only in the year 2013 and while admitting the fact, has gone on to hold that since the time the workmen were relieved from their contractual employment, the workmen have been diligently pursuing their grievance for being absorbed by filing necessary forms with the petitioner for the purpose of considering their case



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for absorption. It is the further submission of the learned senior counsel that the workmen, even as early as in the year 1999, had filed writ petition in W.P. No.14144/99 and 15226/1999 claiming permanency in which direction was issued by this Court to consider their representation and pass appropriate orders. Thereafter, W.P. No.17887/1999 was also filed for the very same relief. However, the inaction on the part of the petitioner to consider their representation and absorb them cannot be put against them by showing that there is delay on their part in raising the dispute and on that ground they should not be precluded from claiming absorption. The aforesaid facts have been appreciated in proper perspective by the Tribunal while negating the contention of delay, which is reasonable.

25. It is the further submission of the learned senior counsel that the issue of jurisdiction had not been raised by the petitioner at the earliest point of time when reference was made by the Central Government. Further, the petitioner never took any objection to the reference nor did the petitioner challenge the order of reference before this Court. Further, the petitioner also did not raise the objection with regard to jurisdiction before the Tribunal



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and also did not raise the objection in the writ petition, but only during the course of argument, the question of jurisdiction has been raised and, therefore, it will not be fair to permit the petitioner to raise the objection of jurisdiction at the fag end which would gravely jeopardize the contesting respondents.

26. It is the further submission of the learned senior counsel that the contesting respondents have not been identified as of 5.1.1998, as contended by the petitioner, is wholly misplaced, as the finding of the Tribunal, based on documentary evidence show that the contesting respondents have been identified by the engineers, working in the Jawahar Dock Yard-II in the prescribed format as contract labourers employed and their names were sent to the petitioner, which is evident from Exs.W-5, W-6, W-7 and W-8. Therefore, the Tribunal has appreciated all the aforesaid documents, while ordering the absorption of the workmen, which cannot be found fault with. Therefore, it is submitted that the writ petition is devoid of merits and deserves to be dismissed.



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27. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and persued the materials available on record.

28. Though very many contentions on the merits of the issue have been raised, but the pivotal issue raised by the petitioner relates to the jurisdiction of the 1st respondent to adjudicate the reference made by the Central Government. The contention raised in this behalf is that the definition of “*appropriate Government*” u/s 2 (a) of the ID Act would only relate to the State Government and, therefore, the dispute referred by the Central Government to the 1st respondent is wholly impermissible.

29. However, before turning the attention to the above contention, the contesting respondents counter the said contention on the ground that the jurisdiction of the 1st respondent has not been raised at any stage right from reference till the award has been passed and not also before this Court at the time of filing the present petition and only at the time of hearing the



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arguments the said contention has been raised, which cannot be gone into at the fag end by this Court.

30. It is to be pointed out that the issue of jurisdiction strikes at the root of the issue, which is legal in nature and whether or not it was raised at the earliest point of time is not a concern as allowing a Tribunal, whose jurisdiction stood ousted in terms of the Act, would render the award passed by it a nullity, which cannot be allowed to continue. Therefore, merely because the party to the *lis* has not raised the legal issue at the earliest point of time would not in any way prevent this Court from dealing with the said issue, as an order passed without jurisdiction by a Tribunal cannot be allowed to continue, irrespective of the fact that the said ground was not raised.

31. It is further to be pointed out that an issue with regard to a question of law can be raised at any point of time in a proceeding and only a question with regard to a fact, which not pleaded at the earliest point of time, the party is estopped from raising it at a later point of time. This has been the consistent view of the Courts and in this regard, useful reference can be had



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to the decision of the Apex Court in **Greater Mohali Area Development**

Authority and Ors. v. Manju Jain and Ors. (MANU/SC/0627/2010), wherein

the Apex Court held thus :-

“25. The respondent No. 1 raised the plea of non-receipt of the letter of allotment first time before the High Court. Even if it is assumed that it is correct, the question does arise as to whether such a new plea on facts could be agitated before the Writ Court. It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the Court or Tribunal below, cannot be allowed to be agitated in the Writ Petition. If the Writ court for some compelling circumstances desires to entertain a new factual plea the court must give due opportunity to the opposite party to controvert the same and adduce the evidence to substantiate its pleadings. Thus, it is not permissible for the High Court to consider a new case on facts or mixed question of fact and law which was not the case of the parties before the Court or Tribunal below. (Vide State of U.P. v. Dr. Anupam Gupta MANU/SC/0173/1992 : AIR 1992 SC 932; Ram Kumar Agrawal and Anr. v. Thawar Das (D) through Lrs. MANU/SC/0499/1999 : (1999) 7 SCC 303; Vasantha Viswanathan and Ors. v. V.K. Elayalwar and Ors. MANU/SC/0490/2001 : (2001) 8 SCC 133; Anup Kumar Kundu



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v. Sudip Charan Chakraborty (2006) 6 SC 666; Tirupati Jute Industries (P) Ltd. v. State of West Bengal MANU/SC/0633/2009 : (2009) 14 SCC 406 and Sanghvi Reconditioners (P) Ltd. v. Union of India and Ors. (2010) 2 SCC 733. In the instant case, as the new plea on fact has been raised first time before the High Court it could not have been entertained, particularly in the manner the High Court has dealt with as no opportunity of controverting the same had been given to the appellants."

32. Yet again, the Apex Court, advertent to the decision in *Greater Mohali case (supra)*, on the issue of the Court entering in to the question of law at a belated point of time, which has not been raised at the threshold, in the decision in ***The National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad and Ors. (MANU/SC/1028/2011)***, held thus :-

"14. There is No. quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which No. inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. (See: M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India and Ors. MANU/SC/0087/2010 : AIR 2010 SC 1089; and Greater Mohali Area Development Authority and



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Ors. v. Manju Jain and Ors. MANU/SC/0627/2010 : AIR 2010 SC 3817).”

33. From the above, it is implicitly clear that there is no embargo for the Court to deal the issue relating to jurisdiction as it pertains to a question of law, notwithstanding the fact that the said issue was not raised at any point of time prior to the same being raised before this Court at the time of argument. Only if it pertains to questions of fact, which have not been raised at the threshold, the party is estopped from raising it at a later point of time. In the case on hand, the issue with regard to jurisdiction is one of a legal issue, which can be raised at any point of time and can be gone into by this Court, the contention raised in this behalf by the contesting respondents does not merit acceptance.

34. Now, this Court has to find out whether the Central Government, before whom the dispute was raised and referred by it to the 1st respondent is the “*appropriate Government*” as defined u/s 2 (a) of the ID Act and if not, whether the entertainment of the reference and adjudication of the same by the 1st respondent is sustainable.



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35. Section 2(a) of the Industrial Disputes Act, 1947 defines the expression "*appropriate Government*". In relation to those industrial disputes which fall within the purview of sub-clause (i), the Central Government is the appropriate Government, while in relation to all other industrial disputes, sub-clause (ii) provides that the State Government would be the appropriate Government. Sub-clause (i) of Clause (a) can, for convenience of exposition, be divided into several parts. The first part deals with an industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a Railway Company. The second part deals with an industrial dispute concerning any such controlled industry as may be specified in this behalf by the Central Government. The third part deals with industrial disputes concerning various other establishments which are specifically enunciated. Sub-section 2 (ii) of Section 2 (a) relates to any other industrial dispute, including the State Public Sector Undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.



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36. In the factual matrix of the present case, proviso to sub-section (ii) to Section 2 (a), would also have a bearing, which pertains to a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.

37. In the case on hand, the contesting respondents are contract labours, who were employed through the contractors and who were working under the petitioner. However, the dispute raised is not in relation to the contractor, but with the employer, viz., the petitioner, who had utilised their services on contract basis.

38. Though decisions have been pressed into service by the petitioner in support of the contention with regard to the State Government being the appropriate Government as defined u/s 2 (a), however, proviso to Section 2



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(a) (ii) read along with sub-section (ii) to Section 2 (a) clearly signifies the authority, which is appropriate to make a reference.

39. Section 2 (a)(ii) pertains to dispute, which could be referred by the State Government and the industry/establishment that would fall within the control of the State Government. Section 2 (a)(ii), for better appreciation, is quoted hereunder :-

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

(a) “appropriate Government” means –

(i)

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

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



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40. The contesting respondents have no quarrel with the fact that the petitioner is a State owned undertaking as is evidenced even by the cause title. It is a Board, which was erstwhile termed as the Tamil Nadu Electricity Board, which was later converted as Tamil Nadu Generation and Distribution Corporation Ltd. The petitioner is a public sector undertaking owned by the Government of Tamil Nadu and, therefore, for all purposes, the petitioner would be guided by sub-section (ii) to Section 2 (a) and any dispute, if raised against the petitioner, should be solely be before the State Government and it cannot be before the Central Government.

41. Therefore, any dispute raised by the workmen or a Trade Union representing the cause of its workmen could be raised only before the State Government, which has to necessarily refer the issue for adjudication before the State Government Industrial Tribunal. No dispute could be raised before the Central Government in respect of a dispute pertaining to State Public Sector Undertakings as the Central Government would not have any jurisdiction over such undertakings and as a corollary thereof, any reference made before the Central Government Industrial Tribunal would be a reference



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in nullity, as the jurisdiction of the Central Government Industrial Tribunal stands ousted.

42. Further, one other aspect, though not directly attracted, but nevertheless would have an effect on the issue relating to jurisdiction is the proviso to sub-section (ii), which prescribes that in respect of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government, shall be the Central Government or the State Government as the case may be, which has control over such industrial establishment.

43. In the case on hand, the dispute, as projected by the contesting respondents is with the petitioner, which is a State owned Public Sector Undertaking, but notwithstanding the same, it is the admitted case of the contesting respondents that they are contract labourers, who were engaged with the petitioner through a contractor and all payments were made by the contractor. Such being the undisputed case, necessarily, the jurisdiction for



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raising the dispute would only be within the realm of the State Government and the State Government alone would be the “*appropriate Government*” as defined u/s 2 (a) of the ID Act to refer the dispute for adjudication and the reference, in the case on hand, made by the Central Government to the 1st respondent is beyond the jurisdiction of the Central Government and the adjudication of the dispute by the 1st respondent is beyond the jurisdiction of the 1st respondent and, necessarily, the award passed by the 1st respondent is wholly an order, which is *per se* illegal and unsustainable both on facts as well as on law.

44. Once this Court has come to the conclusion that the 1st respondent has no jurisdiction to adjudicate the dispute and the reference by the Central Government is beyond its jurisdiction, necessarily, the award passed by the 1st respondent as a consequence of the aforesaid reference would be null and void and cannot have the force of law. Therefore, the dispute referred for adjudication necessarily deserves to be interfered with so also the award passed by the 1st respondent.



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45. In view of the fact that the issue has been decided on the question of jurisdiction as the award has been passed without jurisdiction by the 1st respondent, the other issues raised by the parties need not be discussed by this Court on merits.

46. For the reasons aforesaid, this writ petition deserves to be allowed by setting aside the impugned award passed by the 1st respondent in I.D. No.66/2014 as one passed without jurisdiction. However, liberty is granted to the petitioners to raise dispute in accordance with law, if so advised, and if any dispute is raised, the State Government shall, subject to the provisions of the Act, refer the dispute to the appropriate Tribunal for adjudication.

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Chennai 600 057.

2. The Presiding Officer
Central Government Industrial Tribunal
-cum- Labour Court, Chennai.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
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