

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2477 of 2012

M/s. Braithwaite & Co. Limited

Vs.

Second Industrial Tribunal & Ors.

For the Petitioner : Mr. Ranajay De, Sr. Adv.
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

For the State/Respondents : Mr. Bipin Ghosh.

Hearing concluded on : 04.03.2025

Judgment on : 09.04.2025

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred praying for setting aside of the orders dated 10.11.2010 and 18.02.2011 passed by the learned Judge, 2nd Industrial Tribunal, Kolkata.
2. It is the case of the petitioner herein that the petitioner company was taken over by the Government of India by virtue of the Braithwaite & Company (India) Limited (Acquisition & Transfer of Undertaking) Act,

1976. In terms of Section 12(1) of the Nationalization Act all the workmen within the definition of Industrial Disputes Act, 1947 immediately before the appointed day of the company became the employees of the Central Government on or from the appointed day [1st April, 1975].

3. It is the case of the petitioner that although in respect of the petitioner company Government of India is the 'appropriate Government' the respondent Union raised an alleged industrial dispute regarding the punishment imposed by the petitioner company and ultimately by virtue of an Order of Reference dated 05.02.2008, the State Government made a reference to the respondent Tribunal for adjudication.
4. An application under Section 11 of the Industrial Disputes Act, 1947 read with first proviso to sub-rule (2) of Rule 20H of the West Bengal Industrial Disputes Rules, 1958 was filed with a prayer to take up the preliminary point raised in that application pertaining to maintainability of the reference.
5. By an order no. 147 dated 10.11.2010 the respondent Tribunal was pleased to reject the prayer.
6. A prayer for review was made by the petitioner against the said order which was again rejected by the Tribunal and the Tribunal was pleased to confirm its earlier order dated 10.11.2010.
7. **The petitioner's case is based on the following three points:-**
 - i) In terms of the provisions of Section 12(1) of the said Nationalization Act all workmen under section 2(s) of the Industrial

Disputes Act, 1947 have become the employees of the Central Government on and from 01.04.1975, the appointed date.

- ii) Since by virtue of the Nationalization Act, the company under reference has become a Government of India undertaking and there is total conferment of power by the said Act, the submissions of the management are fully fortified by the Constitutional Bench's decisions reported in **2001 ASCW 3574 [Steel Authority of India Ltd. vs. National Union of Waterfront Workers]**.
- iii) The Notification dated 03.07.1998 was issued in view of the judgment of the Hon'ble Apex Court in Air India Statutory Corporation vs. Union. The said judgment has been over-ruled by the Hon'ble Constitutional Bench of the Apex Court (**Steel Authority of India Limited & Ors. vs. National Union Waterfront Workers & Ors. (Supra)**). In view of the Constitution Bench's decision, the Notification dated 03.07.1998 has become infructuous.

8. The Second Industrial Tribunal, West Bengal in its order dated 10.11.2010 held as follows:-

*"The Notification so issued by the Govt. of India is a product of wise view expressed by the legislature by declaring that the things done or omitted to be done before such rescission should not stand in the way. The **Notification dated 05.05.08** is clear enough to understand that this Notification although **rescinded earlier Notification dated 3rd July, 1998** but the acts done or omitted to be done following this Notification after the publication of notification dated*

3rd July, 1998 till the Notification dated 05.5.08 cannot be discarded as **there is no retrospective effect** given by this Notification dated 05.5.08.

Having considered the pros and cons of this matter, in the light of the submissions put forward by the Ld. Advocate and the Ld. Representative in the context of the several Notifications and other documents, I have sufficient reason to accept that although the notification dated 05.5.08 rescinded the earlier Notification dated 3rd July, 1998 but that does not mean that the act done or omitted to be done by virtue of the earlier notification dated 3rd July, 1998 will be inoperative or set aside as no retrospective effect has been given by virtue of the Notification dated 05.5.08. **Therefore, the instant reference under G.O. No. 140-IR dated 5.2.2008 is obviously maintainable.**

Accordingly, the petition filed by the employer/company dated 3.12.09 challenging the maintainability of the reference of this case and the jurisdiction of this Tribunal is rejected on contest.

Sd/-

2nd Industrial Tribunal

10.11.2010”

- 9. Vide the order dated 18.02.2011 the Second Industrial Tribunal, West Bengal, while considering the review of its' order dated 10.11.2010 held as follows:-**

“.....Having considered the Xerox copies of various notification as available on record together with different documents. Order sheets and the submission put forward by the Ld. Advocates for both

sides, I am to opine that the reference made by the company relating to certain decisions of the Hon'ble Supreme Court and the Notifications etc. were duly considered both in the earlier order dated 10.11.2010 and also those have been considered after the hearing of the Ld. Advocates for both sides. After so doing, I have no hesitation to hold that when the latest Notification dated 05.5.2008 has been issued by the Central Govt. of India in the Gazette of India rescinding the earlier Notification dated 3rd July, 1998 the latest decision shall be binding on the parties. In that view of the matter, I have reason to hold that the application dated 24.12.2010 is liable to be rejected.

In the result, it is,

O r d e r e d

That the application dated 24.12.2010 is rejected on contest.

**Sd/-
2nd Industrial Tribunal
18.02.2011"**

- 10.** On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that the Tribunal considering the fact that the **reference was made on 05.02.2008** which is **prior to** the notification dated **05.05.2008** and covered under the notification dated 3rd July, 1998, held that the appropriate Government in the present case was the State Government, on the finding that the notification dated 05.05.2008 which rescinds the notification dated 3rd July, 1998 was not given any retrospective effect.
- 11.** Learned counsel for the petitioner by filing written notes has relied upon the judgment of the Constitution Bench in **Steel Authority of**

India Limited & Ors. vs. National Union Waterfront Workers &

Ors., reported in **(2001) 7 SCC 1, Page 10. Paragraph 39** of the said

judgment reads as follows:-

*“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.”*

12. It is thus the contention of the petitioner that in the present case the appropriate Government is the Central Government, considering that such cases are covered by the judgment of the Hon’ble Constitution

Bench in **Steel Authority of India Limited & Ors. vs. National Union Waterfront Workers & Ors. (Supra).**

13. It is further submitted that the subsequent notification of the year 2008 rescinding the notification of the year 1998 is of no consequence in view of the said judgment.

14. **Section 2(a) of the Industrial Disputes Act, 1947 lays down:-**

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

(a)"appropriate Government" means-

(i)in relation to any industrial dispute concerning [* * *] any industry carried on by or under the authority of the Central Government [* * *] or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] [* * *] or in relation to an industrial dispute concerning [***] [a Dock Labour Board established under section 5-A 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], 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 3-A 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 5-A and section 5-B, respectively, of the Employees 'Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), [* * *], or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961),or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962),or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963

(52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited] or [the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or] [an air transport service, or] [a banking or an insurance company, a mine, an oil-field] [Cantonment Board,] or a [major port, any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

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

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.]”

- 15. In *Steel Authority of India Limited & Ors. vs. National Union Waterfront Workers & Ors. (Supra)*, the Supreme Court further held:-**

“.....We shall also refer to definitions of relevant terms in sub-section (1) of Section 2 which contains interpretation

clauses. Clause (a) defines the expression appropriate Government thus :

2(1) In this Act, unless the context otherwise requires --

(a) appropriate Government means --

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.

Addressing to the definition of appropriate Government, it may be pointed out that clause (a) of Section 2(1) was substituted by the Contract Labour (Regulation and Abolition) Amendment Act, 1986 with effect from January 28, 1986. Before the said amendment, the definition read as under :

2(1). (a) appropriate Government means --

(i) in relation to any establishment pertaining to **any industry carried on by or under the authority of the Central Government**, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government; or

(ii) any establishment of any railway, Cantonment Board, major port, mine or oil-field, or

(iii) any establishment of a banking or insurance company, **the Central Government**, (2) in relation to any other establishment the Government of the State in which that other establishment is situated.

A plain reading of the unamended definition shows that the Central Government will be the appropriate Government if the establishment in question answers the description given in sub- clauses (i) to (iii). And in relation to any other establishment, the Government of the State, in which the establishment in question is situated, will be the appropriate Government. So far as sub- clauses (ii) and (iii) are concerned, they present no difficulty. The discussion has centred round sub-clause (i). It may be seen that sub-clause (i) has two limbs. **The first limb takes in an establishment pertaining to any industry carried on by or under the authority of the Central Government and the second limb embraces such controlled industries as may be specified in that behalf by the Central Government.....”**

16. **In the present case**, the petitioner herein **carries on the ‘industry’** under the authority of the Central Government as the petitioner herein has been taken over by the Central Government by virtue of the Nationalization Act being the ‘Braithwaite & Company (India) Limited (Acquisition & Transfer of Undertaking) Act, 1976, and by virtue of such acquisition, the right, title and interest of the company has been transferred to and vested in the Central Government and as per Section 12(1) of the Nationalization Act, ‘Workmen’ within the definition of the Industrial Disputes Act, 1947 have become the employees of the Central Government. **The petitioner herein carries on its industry under the authority of the Central Government since its nationalization in the year 1976 and is an undertaking under the authority of the Central Government.**
17. Considering all these facts it is apparent that even if the notification of 2008 rescinding the notification of 1998 had not been passed, the petitioner’s case would be governed by the constitution bench judgment in ***Steel Authority of India Limited & Ors. vs. National Union Waterfront Workers & Ors. (Supra)*** and **the Central Govt. would be the appropriate authority in this case.**
18. Thus the orders under challenge dated 10.11.2010 and 18.02.2011 passed by the learned Judge, 2nd Industrial Tribunal, Kolkata, **being not in accordance with law are set aside.**
19. **The appropriate authority (Central Government)** shall make a ‘reference’ in respect of the dispute in the present case within 60 days from the date of communication of this order.

- 20. WPA 2477 of 2012 is thus disposed of.**
- 21.** All connected application, if any, stands disposed of.
- 22.** Interim order, if any, stands vacated.
- 23.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)