



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 138 OF 2016.

M/S. LARSEN & TOUBRO LTD.,
represented by Shri Arvind Nerurkar, Major of
age, Indian National (Project Head), Opposite
Bus Stand, Old Mumbai Bus Stop, Panaji, Goa.
And Having their Registered Office
At L&T House, N.M. Marg Ballard Estate,
Mumbai 400 001 ... Petitioner.

V e r s u s

1. UNION OF INDIA through its Secretary,
Ministry of Labour & Employment, New
Delhi.
2. REGIONAL LABOUR COMMISSIONER
(CENTRAL), Ministry of Labour &
Employment, 3rd Floor, Dr. Mukund
Bldg., F. L. Gomes Road, Vasco-da-
Gama, Goa 403 802
3. LABOUR ENFORCEMENT OFFICER
(CENTRAL), Mumbai Camp, 3rd Floor,
Dr. Mukund Bldg., F. L. Gomes Road,
Vasco-da-Gama, Goa 403 802
4. DEPUTY CHIEF LABOUR
COMMISSIONER (CENTRAL),
Mumbai, Ministry of Labour &
Employment, Government of India,
Shram Raksha Bhavan, Shiv Shrustri,
Sion, Mumbai 400 022
5. STATE OF GOA through its Secretary
(Labour & Employment), Secretariat,
Porvorim, Goa.
6. COMMISSIONER OF LABOUR &
EMPLOYMENT, Government of Goa,

Shram Shakti Bhavan, 2nd Floor, Patto
Plaza, Panaji, Goa. 403 001

7. GOA STATE INFRASTRUCTURE
DEVELOPMENT CORPORATION
(Government of Goa Undertaking),
7th Floor, EDC House, Dr. Atmaram
Borkar Road, Panaji, Goa. 403 001

8. NATIONAL HIGHWAYS AUTHORITY
OF INDIA, Ministry of Road Transport
& Highways, Government of India, Near
Dr. Babasaheb Ambedkar Vocational
Center, Old Primary Health Center,
MPT, Headland Sada, Goa 403 804.
[ABOVE ALL ARE THE REGD.
ADDRESSES]

... Respondents.

*Mr Nikhil Pai and Mr N. Vereker and Mr Anant Nagi, Advocate for
the Petitioner.*

*Mr. Raviraj Chodankar, Central Govt. Standing Counsel for
respondent nos. 1 to 4.*

*Mr Deep Shiroadkar, Addl. Govt. Advocate for respondent nos. 5 and
6.*

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE: 6th March 2025.

ORAL JUDGMENT: (Per M. S. Karnik, J)

1. Heard learned counsel.

2. This petition under Article 226 of the Constitution of India seeks a
declaration that the State Government is appropriate Government under
Section 2(a) of the Inter State Migrant Workmen(Regulation of Employment
and Conditions of Service Act, 1979(“the Act” for short) for the purpose of
the Project of Construction of Bridge across River Mandovi at Panaji

including approaches on NH 17 between Pundalik Nagar Junction (Porvorim) and Mercedes Junction.

3. Petitioner seeks further direction for quashing and setting aside the proceeding before Judicial Magistrate First Class at Panaji.

4. The petitioner is the construction company. Respondent Nos. 1 to 4 are the Union of India and its officers exercising powers and performing functions under the said Act. Respondent No. 5 and Respondent No. 6 are the State of Goa and its officers exercising powers and performing functions under the Act. Respondent No.7 (GSIDC) is an entity owned by the State of Goa and which has undertaken the project of the construction of the bridge over the river Mandovi at Panaji. Respondent No. 8 (NHAI) is an authority of Respondent No. 1.

5. The Government of Goa through GSIDC floated a tender for the design and construction of the bridge across the river Mandovi on 28.2.2014. The GSIDC declared the petitioner as the lowest bidder on 14.6.2014 and accordingly awarded the contract to the petitioner. GSIDC registered itself as the establishment and the Managing Director of GSIDC as the Principal Employer under the Act with the State Labour Commissioner of the State of Goa. Sub-section 4 of section 1 of Chapter I of the said Act which provides thus:-

“4) It applies—

(a) to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months;

(b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.”

6. Section 2 (a) defines “appropriate Government” as under:-

“a) “appropriate Government” means,— (i) in relation to— (1) 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 (2) any establishment of any railway, Cantonment Board, major port, mine or oil-field; or (3) any establishment of a banking or insurance company, the Central Government; (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;

7. Section 2(b) defines “contractor”, in relation to an establishment, means a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a subcontractor, Khatadar, Sardar, agent or any other person, by whatever name called, who recruits or employs workmen;

8. The Establishment is defined under Section 2(d) which reads thus:-

“establishment” means— (i) any office or department of the Government or a local authority; or (ii) any place

where any industry, trade, business, manufacture or occupation is carried on; and”

9. Section 2(g) defines principal employer which reads thus:-

“principal employer” means,— (i) in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as the Government or the local authority, as the case may be, may specify in this behalf; (ii) in relation to a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named; (iii) in relation to a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named; (iv) in relation to any other establishment, any person responsible for the supervision and control of the establishment.”

10. There is no debate in respect of the work that was carried out by GIDC. Provisions of the said Act are applicable. The dispute is as to the authority competent for initiating any action for breach of the provisions of the said Act. Criminal proceedings of which quashment is sought are initiated at the instance of respondent no. 2. Answer to the controversy need not detain us for long.

11. For the work in question the National Highway Authority of India (NHAI for short) by communication dated 14.2.2015 addressed to the respondent no.2 informed that as per National Highways Act, 1956(as amended from time to time) the Central Government of India has the power to vest or entrust any National Highways in India either to NHAI or BRO Or

State Govt.(NH-Wing). NH-17 and NH-4A in the State of Goa have been entrusted to the Government of Goa and are under their operational control.

12. We may also refer to the affidavit in reply filed by the Project Director of NHA on 11.9.2023 affirmed by Mr C O P Furtado. In paragraph 5 and 6 it is stated thus:-

“5, I say that as mentioned herein above, the Petitioner obtained all the licenses under the labour laws from the State Government, since the contract for the work | including complete design and testing and the installations and means of constructions of a cable stayed bridge across River Mandovi is between Respondent No 5 through Respondent No.7 which is a wholly owned Government of Goa undertaking.

6. I further say that in the tender floated by Respondent No.5 State of Goa through respondent No.7, the respondent No.7 declared the Petitioner as the lowest bidder and accordingly Petitioner was awarded the contract for complete design, testing, and installation by means of construction of a cable stayed bridge across River Mandovi. Thereafter Respondent No 7 -GSIDC has already obtained Registration Certificate as Principal Employer and that the expenditure towards the construction of the new Mandovi bridge i.e. the said project was exclusively funded by the State Government in the said project. It is clearly established that construction of the said project is done exclusively by the State Government through its wholly owned Corporation being Respondent No 7 with its owned funds and necessary approvals from the competent Authority and therefore the State Government is the Appropriate Authority for all legal and practical purpose as far as the Labour laws are concerned. As such I say that Respondent No 8 has no connection as regards the present

Project which is exclusively under the operational control of Respondent No 5, as the Government of India has entrusted NH -17 and NH-4A to the State Government of Goa.”

13. Moreover it is pertinent to note that a joint meeting was held on 13.3.2018 at Conference Hall of GSIDC in pursuance of the directions passed by this Court whereby all concerned officers were requested to attend the meeting.

14. The relevant portions of the detailed minutes of the meeting as recorded in the preceding paragraphs, are as follows:-

“Thereafter, he explained in brief the project, "Design and construction of Bridge across River Mandovi at Panaji including approaches on NH 17 between Pundaliknagar Junction (Porvorim) and Mercedes junction" and informed that the entire bridge is being constructed through the GSIDC under entire supervision, guidance, directions, control, management and funding of the State Government. There is no supervision, directions, control, management or funding of whatsoever kind and nature by the Central Government at this stage in respect of the said project. He also emphasized that the entire project is situated in the State of Goa on its own land/site and the GSID is also the Special Purpose Vehicle/Company of the Government of Goa which is the Principal Employer for the purpose and has obtained all the requisite permissions from the Competent Authority for the construction of the project. The attention of all the participants is also invited to para 1 of the letter bearing No.NHA/PIV/GOA/NH-17B/2014-15/905(a) dated 14/02/2015 of the National Highways Authority of India addressed to the Regional

Labour Commissioner vide which it is specified that as per the National Highways Act, 1956, the Central Government has power to vest or entrust any National Highways in India either to NHAI or BRO or State Government and NH-17 and NH-4A in the State of Goa have been entrusted to Government of Goa and are under their operational control (Exhibit III).

Shri N. M. Shetty and Smt. Neetha Rebello have submitted that the Appropriate Government in respect of the said project is Central Government since the institution NHAI is the creator of the statute and also in terms of the judgment delivered by the Supreme Court of India in SAIL case.

(iii) Whereas Shri Srinet Kothwale, (Managing Director, GSIDC), Adv. Nikhil Pai, Shri A. S. Mahatme, Under Secretary (Labour), Smt. Asha Khaunte, Dy. Labour Commissioner, Shri S. Shyam, Manager (Accounts) representative of M/s. Larsen & Toubro Ltd., Shri P. S. Dodamani, (DGM) (Tech) & Project Director - NHAI, vide letter dated 08/03/2018 noted that there is no authority of the Central Government over the GSIDC or the Contractor who is executing the said project or the site where the project is being executed. Furthermore, the GSIDC who is the Principal Employer is a wholly owned Corporation of the State Government only and the land/site under reference where the said project is being constructed also belongs to the State Government

Whereas after due deliberation and discussion and considering the provisions contained in the interpretation clauses of aforementioned Labour Laws in respect of the definition of the "Appropriate Government", and a conjoint meeting of all the facts, the Officials viz. Shri A. S. Mahatme, Smt. Asha Khaunte, Adv. Nikhil Pai, Shri Shyam Subramaniam, Shri Srinet Kothwale (GSIDC)

accepted the views and in the result answer the reference as for the purpose of project "Design & Construction of Bridge across River Mandovi at Panaji including approaches on NH 17 between Pundaliknagar Junction (Porvorim) and Mercedes junction", the Appropriate Government shall be the Government of Goa. Accordingly, the Petitioner is bound by law to comply with all the provisions of Labour Laws under the Government of Goa as the Appropriate Government."

15. Shri Chodankar, learned Central Govt. Standing Counsel for respondent nos. 1 to 4 submitted that since the Project is of the NHAI, it will be the respondent no. 2 who will be the appropriate Government for the purpose of the said Act.

16. We are afraid that in view of the provisions of the Act which we have reproduced herein above and in view of the clinching material in the form of the stand taken by NHAI, it is the GSIDC which will have to be regarded as establishment within the meaning of Section 2(d). Furthermore, the Managing Director of the GSIDC is the principal employer. There is no debate that it is the Managing Director of GSIDC who is the principal employer within the meaning of Section 2(d) of the said Act. The petitioner is the company whose contractor who had engaged migrant workmen.

17. The observations made in the minutes of the joint meeting held on 13.3.2018 are in consonance with the view that it is the State Government which is the appropriate Government under Section 2(a) of the Act.

18. We are more than satisfied that the work in question is carried on by and under the authority of the GSIDC. There is nothing on record to

demonstrate that the work related to this establishment is carried out by or under the authority of the Central Government.

19. We rely on the decision of the Supreme Court in ***Steel Authority of India Ltd and ors. Vs. National Union of Water Front Workers & ors. etc. (2001)7 SCC 1*** in support of our observations.

20. Petition is therefore allowed in terms of prayer clauses (a) and (b)(i).

No order as to costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.