
Parbati Koldam Transmission Co. Ltd. Vs State of H.P.**Cr. MMO No. 4104 of 2013 along with Cr. MMO No. 4114 of 2013**

Court: High Court of Himachal Pradesh**Date of Decision:** July 11, 2014**Acts Referred:**

Contract Labour (Regulation and Abolition) Act, 1970 " Section 2(a), 2(a)(ii), 28(3),
7#Electricity Act, 2003 " Section 38#Industrial Disputes Act, 1947 " Section 2(a), 2(a)(i)

Hon'ble Judges: Sureshwar Thakur, J**Bench:** Single Bench

Advocate: Satyen Vaidya, Advocate for the Appellant; Vivek Singh Attri, Deputy Advocate
General, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sureshwar Thakur, J.

Both these petitions are being disposed of by a common order as they involve common questions of facts and law,

besides common reliefs are claimed in both the petitions.

2. The petitioner, is, a joint venture company registered with the Registrar of Companies, National Capital Territory of Delhi and Haryana. The

petitioner company, is, aggrieved by the proceedings pending in the Court of Judicial Magistrate, 1st Class, Mandi, in, pursuance to complaint No.

4-III of 2012 and complaint No. 201 of 2012, instituted in the Court aforesaid by the Labour Inspector, Government of Himachal Pradesh,

Sundernagar u/s 7, 28(3) of the Contract Labour (Regulations and Abolitions) Act, 1970 read with Rule 17, 80 (4) of the Himachal Pradesh

Contract Labour (Regulations and Abolitions) Rule, 1974. The petitioner prays that the proceedings, as, launched before the Court aforesaid at

the instance of the Labour Inspector, to the Government H.P., Sunder Nagar, be quashed.

3. A perusal of Annexure P-1, unveils the fact of the petitioner company bearing the nomenclature, of, Parbati Koldam Transmission Company

Limited and its being a company incorporated under the Companies Act, 1956. Now, an advertence to Annexure R-1, unfolds the fact of the

share capital of the government in the company aforesaid, being 26% and the remaining share of 74%, of the issued and paid up equity share

capital of the company aforesaid being subscribed and held by Reliance.

4. The petitioner company was under Annexure P-4, which comprises the licence to the petitioner company issued by the Central Electricity

Regulatory Commission authorized to transmit electricity, as, a transmission licensee.

5. The learned counsel appearing for the petitioner company has adverted, to, the definition of ""appropriate government"" existing in Section 2(a) of

The Contract Labour (Regulation and Abolition) Act, 1970 which stand extracted hereinafter, wherein, the definition borne by the phraseology

the appropriate government"" has been conveyed to be in relation to an establishment in respect of which the ""appropriate government"" under the

Industrial Disputes Act, 1947, is the Central Government, hence, constituting the latter to be the ""appropriate government"", and in relation to any

other establishment, the government of the State in which that any establishment is situated, would be the ""appropriate government"". Section 2(a)

of the Contract Labour (Regulation and Abolition) Act, 1970 reads as under:

2. Definitions:-(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;

6. Now the counsel for the petitioner urges, that given the definition of ""appropriate government"" existing in Section 2(a)(i) of the Industrial

Disputes Act, 1947, which, is, extracted hereinafter, and which communicates, that in relation to any ""industrial dispute concerning any industry

carried on or by or under the authority of the Central Government"", the appropriate government would be the Central Government, hence, he

concerts to contend, that, with the Central Government having conferred a licence upon the petitioner company, as comprised in Annexure P-4,

the petitioner company, is, a Central Transmission Utility, as such, would transmit electricity by or under the authority of the Central Government,

as such, the Central Government would, be the appropriate government in respect of the industry aforesaid. Section 2(a)(i) of the Industrial

Disputes Act, 1947 reads as under:-

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.....

Consequently, he urges that the initiation of action at the instance of the Labour Inspector to the Government of Himachal Pradesh, Sunder Nagar

is unwarranted.

7. For the reasons recorded hereinafter, the above submission of the learned counsel appearing for the petitioner stands to be rejected. A perusal

of Annexure P-4 divulges the fact that under it licence, was accorded in favour of the petitioner company, to transmit electricity, as a transmission

licencee. Even, though, Annexure P-4 has been issued in favour of the petitioner company, by the Central Electricity Regulatory Commission and

even, if, Section 38 of the Electricity Act, 2003 records the fact of the Central Government being authorized to notify any government company as

the Central Transmission Utility, yet mere issuance of Annexure P-4, in, favour of the petitioner company would not constitute it to be a Central

Transmission Utility, or hence, equip it to don the garb of an ""industry"" carried on by or under the authority of the Central Government, more so,

and preponderantly when there is a revelation in Annexure R-1, of 26 % of the share capital of the petitioner company being owned by the Central

Government, which renders it to be stripped off on its status as a Government company. In sequel the reliance by the learned counsel appearing for

the petitioner company on Section 38 of The Electricity Act, 2003, is of no avail for canvassing given the fact that it being purported Central

Transmission Utility, it acquires the mental of industry carried on by or under the authority of the Central Government.

8. Even otherwise, for determining the import and significance of word ""appropriate government"" vis-a-vis, the petitioner company, a definitive clue

thereof exists, in, Section 2(a) of the Industrial Disputes Act, 1947, as Section 2(a) of The Contract Labour (Regulation and Abolition) Act, 1970

reckons or mandates, the definition of the ""appropriate government"" as contained in Industrial Dispute Act, 1947, to be a reckoner, in, respect of

its meaning. The signification borne by the words ""appropriate government"" in relation to any industrial dispute ""concerning any industry carried on

by or under the authority of the Central Government"" is the fulcrum on which entire controversy rests. The factum of the petitioner company being

incorporated under the Companies Act and the Reliance company holding 74% share in the paid up equity share capital of the petitioner company

pronounces the fact that of it being not a government company, hence, per se does not constitute it to be a government company. With the factum

of a licence having conferred upon the petitioner company by the Central Electricity Regulatory Commission and its, hence, constituting the

petitioner company, to, be a transmission licensee, for the purpose of transmitting electricity, to, the considered mind of this Court, would not vest

in the petitioner company a right to don the vestments of an ""industry carried on by or under the authority of the Central government"". Even if, the

status of a licensee company by Annexure P-4, has been conferred upon the petitioner company, yet, it, does not establish or sustain the

contention of the learned counsel appearing for the petitioner company, to be it, as such, rendering the petitioner company to be controlled by the

Central government, so as to further hold that it is, hence, is carrying on business by or under the authority of the Central Government. In sequel,

for reiteration, the holding of a licence by the petitioner company, issued to it by the Central Electricity Regulatory Commission would not per se

constitute the petitioner company to be, its carrying on business by or under the authority of the Central Government.

9. More so, when the petitioner company is a company incorporated under the Companies Act and, hence, when its constitution powers and

functions are provided for and regulated by its memorandum of association and the articles of association, besides when it has a separate existence

and the law recognizes it, as, a juristic person separate and distinct from its members. Consequently, when, as such, it is rendered not to be either

an agent or servant of the Central Government. In aftermath, when it is to be construed not an agent or servant of the Central Government,

whereas, words ""by or under the authority of the Central Government"" connote the existence of a relationship or the master and servant, which

relationship does not exist inter se licensee or licensor. Resultantly, the non existence of such a relationship of master and servant inter se the

petitioner company and the Central Government is to be construable, to be not rendering, it, to be an ""industry carried on or by or under the

authority of the Central Government"" and rather rendering, it, while located within the territory of Himachal Pradesh, to be, an establishment qua

which the ""appropriate government"", given its location in Himachal Pradesh, by applying the provisions of Section 2(a)(ii) of The Contract Labour

(Regulation and Abolition) Act, 1970, is the Government of Himachal Pradesh. Consequently, the act of the functionary of the Government of

Himachal Pradesh in instituting the complaints against the petitioner company for purported infringement and violation of the provisions of the Act is

warranted. In coming to the above conclusion that proof of existence of the relationship of master and servant inter se the petitioner company and

the Central Government is indispensable for construing whether the industry as carried on by the petitioner company is carried on by or under the

authority of the Central Government so as to constitute the Central Government to be the appropriate government qua it, reliance is placed upon

the judgment reported in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, . Consequently, the appropriate government in respect

of the petitioner company, is, not the Central Government. In aftermath, the appropriate government with respect to the petitioner company is,

hence, the Government of the State of Himachal Pradesh.

10. In view of the above discussion, it is held that the complaints instituted by the officer to the Government of Himachal Pradesh do not suffer

from any legal flaws nor with any legal infirmities. Accordingly, both the petitions are dismissed. No costs.