

GMR Hyderabad International Airport Limited Vs The State of Andhra Pradesh

Court: Andhra Pradesh High Court

Date of Decision: July 14, 2014

Acts Referred: Aircraft Act, 1934 â€” Section 2, 2(2), 5, 5-A
Airports Authority of India Act, 1994 â€” Section 1(3), 14, 2(b), 2(e), 3
Banking Services Commission Act, 1975 â€” Section 3
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 â€” Section 3A
Constitution of India, 1950 â€” Article 12, 12, 13, 226
Contract Labour (Regulation and Abolition) Act, 1970 â€” Section 12(1), 2(1)(a), 23, 24, 7(2)
Deposit Insurance and Credit Guarantee Corporation Act, 1961 â€” Section 3
Dock Worker (Regulation of Employment Act, 1948 â€” Section 5A
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€” Section 5A, 5B
Employees State Insurance Act, 1948 â€” Section 3
Food Corporations Act, 1964 â€” Section 16
Industrial Disputes Act, 1947 â€” Section 2, 2(a), 2(a)(i)
Life Insurance Corporation Act, 1956 â€” Section 3
National Housing Bank Act, 1987 â€” Section 3
Regional Rural Banks Act, 1976 â€” Section 3
Unit Trust of India Act, 1963 â€” Section 3
Warehousing Corporations Act, 1962 â€” Section 3

Citation: (2014) 6 ALD 572 : (2014) 6 ALD(Cri) 572

Hon'ble Judges: Akula Venkata Sesha Sai, J

Bench: Single Bench

Advocate: P. Kamlakar, Advocate for the Appellant; P. Vishnuvardhan Reddy, (Asst. Solicitor General), Advocate for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

A.V. Sesha Sai, J.

This writ petition is filed under Article 226 of the Constitution of India, seeking to declare that the State Government is the appropriate Government and not the Central Government for the petitioner's establishment under the provisions of the Contract Labour

(Regulation and Abolition) Act, 1970 (hereinafter called "1970 Act") and for a consequential direction to the Central Government/second

respondent herein not to take any action against the petitioner and its contractor under the provisions of 1970 Act.

2. The pleaded case of the petitioner, as per the affidavit filed in support of the writ petition is as under:

2.1. For the purpose of executing the civil works of the airport, the petitioner got itself registered as principal employer with the first respondent

State Government under the provisions of Section 7(2) of 1970 Act and the Labour Officer, Hyderabad-II issued form-II certificate of registration

dated 24.06.2004. The Assistant Labour Commissioner (Central), Hyderabad, Office of the Regional Labour Commissioner (Central),

Hyderabad directed the petitioner to register itself as principal employer with the Central Government and the contractors to obtain license under

1970 Act.

2.2. Petitioner herein vide letter dated 16.02.2005 requested the Assistant Commissioner of Labour, Government of Andhra Pradesh to decide

and inform the further course of action to be conducted and vide reply dated 22.02.2005 petitioner was informed that the State Government is the

appropriate Government but not the Central Government. Enclosing the said reply dated 22.02.2005 the petitioner herein vide letter dated

25.02.2005 requested the Assistant Commissioner of Labour (Central) not to initiate any proceedings against it.

2.3. The Regional Labour Commissioner, Hyderabad (Central) vide letter dated 12.08.2005 informed the petitioner that the opinion of the State

authority is not in conformity with law laid down by the Supreme Court and that the Central Government is the appropriate Government and

directed the petitioner to register itself with the Central Government. By way of a letter dated 12.01.2006 petitioner sought the intervention of the

State Government for resolution of the issue. To avoid any confrontation, petitioner got itself registered with the Central Government as a principal

employer vide form-II dated 17.04.2006. Subsequently, vide letter dated 02.06.2006, the Commissioner of Labour of the State Government

informed that the first respondent/State Government is the appropriate Government while referring to the Government Memo dated 07.02.2006.

2.4. The Regional Labour Commissioner (Central), Hyderabad vide letter dated 01.10.2008 addressed to the Joint Commissioner of Labour,

Government of Andhra Pradesh stated that the petitioner's establishment relates to air transport service as such the Central Government is the

appropriate Government in terms of Section 2(a)(i) and (ka) of the Industrial Disputes Act, 1947 (hereinafter called "I.D. Act") and consequently

under the provisions of 1970 Act. By way of letter dated 03.10.2008, petitioner requested the Labour Enforcement Officer (Central) not to take

any proceedings against it.

2.5. Under Sections 23 and 24 of 1970 Act any execution of work by a contractor without a license u/s 12(1) of 1970 Act is punishable.

3. In the above backdrop, while contending that the appropriate Government is the State Government but not the Central Government, the present

writ petition has been initiated.

4. Responding to the Rule Nisi issued by this Court, counter affidavits have been filed by the respondents 1 and 2 in the direction of justifying their

respective stands and stance.

5. Heard Sri E. Manohar, learned Senior Counsel appearing for the counsel for the petitioner Sri P. Kamalakar, Sri Vishnuvardhan Reddy, learned

Assistant Solicitor General for the second respondent Union of India and the learned Government Pleader for Labour for the first respondent State

Government.

6. Contentions advanced by the learned Senior Counsel Sri E. Manohar:

6.1. Petitioner establishment does not fall within Section 2(a)(i) of the I.D. Act, as such, the appropriate Government is the State Government and

not the Central Government.

6.2. The Central Regional Labour Commissioner erred in stating that the petitioner establishment relates to air transport service, as such, the

appropriate Government is the Central Government.

6.3. Mere issuance of license and exercise of control as per the Aircraft Act, 1934 would not constitute the Central Government as the

appropriate Government and Section 5-A of 1970 Act has no application nor any relevance to the issue under the provisions of 1970 Act.

6.4. Second respondent has no jurisdiction over the petitioner.

6.5. To bolster his submissions and contentions, the learned Senior Counsel places reliance on the Judgments of the Hon"ble Supreme Court in the

case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and Cochin International

Airport Ltd. Vs. The Regional Labour Commissioner and Another, .

7. Contentions of the first respondent State Government:

7.1. First respondent is the appropriate Government.

7.2. Second respondent Union of India cannot assume the jurisdiction over the petitioner"s establishment.

7.3. Sections 5 and 5-A of the Aircraft Act, 1934 have no application to the present issue.

7.4. Mere issuance of license under the Aircraft Act, 1934 would not constitute the Central Government as the appropriate Government.

7.4. First respondent herein totally supports the case of the petitioner herein.

8. Contentions of the Second respondent Union of India:

8.1. The presumption of the petitioner herein is absolutely incorrect and opposed to the very spirit and object of the provisions of 1970 Act and

the Rules framed thereunder.

8.2. u/s 2(a)(i) of the I.D. Act and Section 2(1)(a) of 1970 Act, Central Government is the appropriate Government and since the petitioner herein

is undertaking air transport service, the action of the second respondent is justified and is in accordance with law.

8.3. Writ petition is not maintainable on law and facts.

8.4. Only after examining the issue in depth, the second respondent directed the petitioner to follow the Central Rules to enforce the provisions of

1970 Act. The Judgment of the Hon"ble apex Court in the case of Steel Authority of India Ltd. and Others (supra) cannot be applied. The

functions of airports and air traffic are regulated by the Ministry of Civil Aviation, Government of India, as such, the Central Government is the

appropriate Government but not the State Government. The contentions of the State Government that it is the appropriate authority is incorrect

and the State Government cannot decide about the appropriate Government and the same needs to be decided purely on facts and as per the

statute.

9. In the light of the above pleadings, submissions and contentions, now the issues which boil down for consideration and which emanate for

determination of this Court are:

9.1. What is the appropriate Government for the purpose of exercising jurisdiction under the Contract Labour (Regulation and Abolition) Act,

1970?

9.2. Whether the service which the petitioner is offering falls within the definition "air transport service" as defined under the Aircraft Act, 1934 and

the Aircraft Rules, 1937?

10. For the purpose of resolving the controversy in the present writ petition, the relevant provisions under 1970 Act, the I.D. Act, Airport

Authority of India Act, 1994 and Aircraft Act, 1934 and Aircraft Rules, 1937 need reference and consideration.

11. Section 2(1)(a) of 1970 Act defines the term appropriate Government, which reads as under:

2(1)(a)"appropriate government means,-

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

Government;

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

12. From a reading of the above provision of law it would be very much manifest and apparent that the appropriate Government in respect of an

establishment will have to be decided in terms of the provisions of the I.D. Act. Therefore, it is apposite and necessary to refer to the provisions of

Section 2 of the I.D. Act. Section 2(a)(i) of I.D. Act, defines appropriate Government as follows:

2 (a) "appropriate government" means-

(i) in relation to any industrial disputes concerning [* *] any industry carried on by or under the authority of the Central Government, [***] or by

a railway company 5 [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 7[8[9[10[a Dock Labor Board established u/s 5A of the Dock Workers (Regulation of Employment)

Act, 1948 (9 of 1948), or the 11[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956], or

the Employees' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of

Trustees constituted u/s 3A 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 u/s 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous

Provisions Act, 1952 (19 of 1952), [***], or the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act,

1956 (31 of 1956), or 13[the Oil and Natural Gas Corporation Limited registered under the Companies Act. 1956], or the Deposit Insurance

and Credit Guarantee Corporation established u/s 3 of the Deposit Insurance and Credit Guarantee Corporations Act. 1961 (47 of 1961), or the

Central Warehousing Corporation established u/s 3 of the Warehousing Corporation Act, 1962 (58 of 1962), or the Unit Trust of India

established u/s 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established u/s 3, or a Board of

Management established for two or more contiguous States u/s 16 of the Food Corporation Act, 1964 (37 of 1964), or 14[the Airports Authority

of India constituted u/s 3 of the Airports Authority of India Act, 1994], or a Regional Rural Bank established u/s 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,

15[the National Housing Bank established u/s 3 of the National Housing Bank Act, 1987 (53 of 1987)], or the Banking Service Commission

established u/s 3 of the Banking Service Commission Act, 1975 or 16[17[an air transport service, or a banking or an insurance company], a mine,

an oil-field.] 18[a Cantonment Board,] or a major port, the Central Government, and]

13. Obviously, the Government of India is harping heavily on the term "transport service" mentioned in the above Section 2(a)(i) of the I.D. Act.

and claiming empathetically the jurisdiction of the petitioner establishment under the provisions of 1970 Act. Therefore, this Court is required to

examine as to whether the service being offered by the petitioner falls within the above parameters of "air transport service" and for the said

purpose the provisions of Aircraft Act, 1934 and the Aircraft Rules, 1937 and Airport Authority of India Act, 1994 are required to be referred

and examined.

14. It is a fact that the "air transport service" is not defined either under 1970 Act or under the I.D. Act. Section 2(2) of the Aircraft Act, 1934

and Rule 3(3) of the Aircraft Rules 1937 define the term "aerodrome" as follows:

Section 2(2) "aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or

departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;

Rule 3(2) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or

departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;

15. Section 2(b) of the Airports Authority of India Act, 1994 defines the term "airport" as under:

2(b) "airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes

aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934 (22 of 1934).

Section 2(e) of the Airports Authority of India Act, 1994 defines the term "air transport service" as under:

2(e) "air transport service" means any service, for any kind of remuneration, whatsoever, for the transport by air or persons, mail or any other

thing, animate or inanimate, whether such service relates to a single flight or series of flights.

16. Rule 3(9) of the Airport Rules, 1937 also defines the term "Air transport service" as infra:

3(9) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of

remuneration whatsoever, whether such service consists of a single flight or series of flights.

17. The first contention of the second respondent Union of India is that the petitioner company falls within the ambit of "air transport service" as

per the I.D. Act and the Central Government is the appropriate Government for "air transport service". The said contention is required to be

considered in the light of the above provisions.

18. As per Section 2(e) of the Airports Authority of India Act, 1994 and Rule 3(9) of the Aircraft Rules, 1937 the term "air transport service"

includes service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever,

whether the same consists of a single flight or series of flights. Therefore, from the language employed in the said provisions of law, it would be very

much manifest that the air transport service does not, by any stretch of imagination include the activity pertaining to airport management.

19. Yet another contention advanced by second respondent with reference to control of the second respondent Union of India on the petitioner's

establishment. In the letter No. 95/50/2008 EI dated 01.10.2008 the second respondent Union of India stated that the Central Government issues

licenses for both private use and public use aerodromes and that under Sections 5 and 5-A of the Aircraft Act, 1934 centre exercises total control

with regard to operation, maintenance, safety and surveillance and approval and disapproval of user charges/fees etc and any other matter included

or ancillary to air transport service. The second respondent obviously is attempting to justify its action by contending that the petitioner is an

industry under the authority of the central Government.

20. At this juncture, it may be apposite and necessary to refer to the judgment of the Hon"ble apex Court in the case of Steel Authority of India

Ltd. and Others (supra). In the said judgment, the Hon"ble apex Court at paragraphs 28, 30, 31, 37, 38 and 46 held as under:--

28. Now, going back to the definition of the said expression, it combines three alternatives viz. (a) any industry carried on by the Central

Government, (b) any industry carried on under the authority of the Central Government, and (c) any industry carried on by a railway company.

Alternatives (a) and (c) indicate cases of any industry carried on directly by the Central Government or a railway company. They are too clear to

admit of any polemic. In regard to alternative (b), surely, an industry being carried on under the authority of the Central Government cannot be

equated with any industry carried on by the Central Government itself. This leaves us to construe the words "'under the authority of the Central

Government'". The key word in them is "'authority'".

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.

31. In interpreting the said phrase, support is sought to be drawn by the learned counsel for the contract labour from the cases laying down the

principles as to under what circumstances a government company or undertaking will fall within the meaning of "State or other authorities" in Article

12 of the Constitution. We shall preface our discussion of those cases by indicating that for purposes of enforcement of fundamental rights

guaranteed in Part III of the Constitution the question whether a government company or undertaking is "State" within the meaning of Article 12 is

germane. It is important to notice that in these cases the pertinent question is appropriateness of the Government--which is the appropriate

Government within the meaning of the CLRA Act; whether the Central or the State Government is the appropriate Government in regard to the

industry carried on by the Central/State Government company or any undertaking and not whether such Central/State Government company or

undertaking comes within the meaning of Article 12. The word "State" is defined in Article 12-13 which is quoted in the footnote.

37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which

are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law--constitutional or

administrative law--as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all

purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law.

38. From the above discussion, it follows that the fact of being an instrumentality of a Central/State Government or being "State" within the meaning

of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an

instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition

of "appropriate Government" in the CLRA Act. Take the case of a State Government corporation/company/undertaking set up and owned by the

State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that

the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry, can it be

said that the appropriate Government is the Central Government? We think the answer must be in the negative. In the above example, if, as a fact,

any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial

dispute concerning that industry, the appropriate Government will be the Central Government. This is so not because it is an agency or

instrumentality of the Central Government but because the industry is carried on by the State Government company/corporation/undertaking under

the authority of the Central Government. In our view, the same reasoning applies to a Central Government undertaking as well. Further, the

definition of "establishment" in the CLRA Act takes in its fold purely private undertakings which cannot be brought within the meaning of Article 12

of the Constitution. In such a case, how is "appropriate Government" determined for the purposes of the CLRA Act or the Industrial Disputes

Act? In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the

Central Government. Obviously, there cannot be one test for one part of the definition of "establishment" and another test for another part. Thus, it

is clear that the criterion is whether an undertaking/instrumentality of the Government is carrying on an industry under the authority of the Central

Government and not whether the undertaking is an instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it

of the Central Government or the State Government.

46. We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an

industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CLRA Act, is that the

industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an

agency of the Central Government for purposes of Article 12 of the Constitution; such an authority may be conferred either by a statute or by

virtue of the relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of

each case. In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of

the expression "appropriate Government" in *Cochin International Airport Ltd. Vs. The Regional Labour Commissioner and Another*, is answered

accordingly.

21. In the case of *Cochin International Airport Limited* (supra) the High Court of Kerala while referring to the above referred judgment rendered

by the Hon'ble apex Court in *Steel Authority of India Ltd. and Others* (supra), at paragraphs 21, 22, 26, 27, 28, 29 and 30 held as under:

21. Taking the principle laid down by the Supreme Court as extracted above, as determinative of the question as to which Government is eligible

to be treated as an "appropriate government for the purpose of ID Act and for the purpose of CLRA Act, it could be safely concluded that if an

authority to carry on the company or undertaking is conferred by the Central Government under a statute, then no further question survives. The

Central Government is the "appropriate government". The question as to whether the establishment is otherwise a ""State"" within the meaning of

Article 12 of the Constitution is not determinative of the issue. If it is possible to discern the relationship of principal and agent qua the Central

Government and the establishment in question, then again, it would point to the Central Government as the ""appropriate government"" qua the

establishment in question. This is a matter, which has to be ascertained with reference to the facts of each case.

22. Mr. Pathros Matthai, learned Senior Counsel submits that the word "authority" occurring in Section 2(a) of the Act has been construed by the

Supreme Court as one which should form the basis for the emergence of a principal-agent relationship and it is in such circumstances that an

industry can be construed as one being carried on "under the authority of the Central Government. The establishment should have the status of an

agent of the Central Government as such, with the Central Government acting as the principal. It is contended that if the said test is applied, the

petitioner obviously cannot be considered as the agent of the Central Government; nor is there any principal-agent relationship between the two.

The Central Government cannot be considered as the "appropriate Government" qua the petitioner, it is contended.

26. Keeping the parameters laid down by the Supreme Court in the case of SAIL, applying the same to the facts of the present case, can it be said

that the petitioner owes its existence to the conferment of such authority? It does not. The petitioner is a legal entity, being a public limited

company, which is incorporated under the Companies Act. It has as one of its objects running an Aerodrome. But the existence of the petitioner as

a juristic personality is not traceable to the conferment of any specific authority by the Central Government. The petitioner would continue to be a

legal personality whether licensed by the Central Government to run an Aerodrome or not. But, since the functioning of an Aerodrome requires a

licence from various statutory authorities, the same has been applied for and obtained. The relationship between the Central Government and the

petitioner in the context of the licence issued under the Aircraft Rules would only be as a licensor and a licensee and irregularity in any action the

licensor may take or may not take, could be the subject matter of a judicial review, at best. But the relationship did not come into existence by

reason of the conferment of an authority by the Central Government expressly as a statutory or non-statutory instrument. The licensing mechanism

is regulated solely for the purpose of the Act and the Rules under which the licences are granted. The petitioner cannot be considered as owing its

existence or continuance to the authority specifically conferred in that regard by the Central Government. Applying the dictum laid down by the

Supreme Court in SAIL, I am of the view that the petitioner cannot be considered as existing under the authority of the Central Government for the

purpose of Section 2(a) of the ID Act or Section 2(a) of the CLRA Act, as the case may be.

27. The second contention taken up by Mr. Babu centers around the definition of "Air Transport Service" as occurring in the Airports Authority of

India Act, 1994. Section 2(e) of the 1994 Act defines "Air Transport Service". It reads as follows:

2(e). "Air Transport Service" means any service, for any kind of remuneration whatsoever, for the transport by air of persons, mail or any other

thing, animate or inanimate, whether such service relates to a single flight or series of flights;

28. It is contended by Mr. Babu that Air Transport Service would mean any service for any kind of remuneration whatsoever, for the transport by

air of persons, mail or any other thing, animate or inanimate etc. Elaborating on the same, he contended that a service which is rendered by the

petitioner at the Airport could also be an "Air Transport Service within the meaning of Section 2(e) of the 1994 Act and consequently, the Central

Government should be treated as the "Appropriate Government", in relation to the petitioner.

29. Reference has also been made to the definition of "Air Transport Service" in the Aircraft Rules. Rule 3(9) of the Aircraft Rules defines "Air

Transport Service". The definition of "Air Transport Service" in Airports Authority of India Act and the Aircraft Rules seems to be the same

through there is a definite difference in the import of the definition in the Aircraft Rules, 1937. It reads as follows:

"Air Transport Service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of

remuneration whatsoever, whether such service consists of a single flight or series of flights.

30. Section 1(3) of the 1994 Act makes it clear that the Act applies to all airports whereat Air Transport services are operated or are intended to

be operated other than airports and airfields belonging to or subject to the control of any armed forces of the union. An "Airport is defined in

Section 2(b) of the Airport Authority of India Act and it includes an Aerodrome, within the meaning of Clause (2) of Section 2 of the Aircraft Act.

The definition of Air Transport Service in Section 2(e) of Act 55/94 does not refer to Airport Service specifically. But it refers to any service and

then it is co-related with transport by air etc. If the intention of the legislature was to see that Air Transport Service comprehends an Aerodrome

which includes an Airport also, then a specific indication would have been available in the statute itself. Though the words used in "Air Transport

Service"" u/s 2(e) of the 1994 Act refers to any service, obviously, contextually or otherwise, it would be relatable to the service rendered in the

transportation of persons or other things by air. Services, which are rendered in an Airport which are independently dealt with in the Aircraft Act,

1934 do not seem to be intended to be dealt with in the definition of Air Transport Service occurring in Section 2(e) of the Airports Authority of

India Act.

22. From the principles laid down in the above referred judgments, it can be safely concluded that the petitioner's establishment is not an industry

under the control of the Central Government and it can also be concluded that the service being rendered by the petitioner herein do not fall under

the definition of "air transport service". In the considered opinion of this Court, the appropriate Government for the purpose of the petitioner's

establishment under the provisions of 1970 Act is the State Government and not the Union of India. Simply because the Union of India is the

licensing authority for the purpose of establishing the petitioner's establishment, by any stretch of imagination, it cannot be said that the petitioner is

an establishment under the control of the Union of India.

23. For the aforesaid reasons and having regard to the provisions of law enumerated supra and having regard to the judgments referred to above,

the writ petition is allowed, declaring that the State Government is the appropriate authority but not the Central Government in respect of the

petitioner's establishment for the purpose of 1970 Act. As a sequel, miscellaneous petitions if any, also stand disposed of. No costs.