

(1995) 03 DEL CK 0083

Delhi High Court

Case No: C. W. P. No. 1350 of 1974

Shri Nand Kishore Jain

APPELLANT

Vs

Presiding Officer, Labour Court,
Delhi and OthersRESPONDENT

Date of Decision: March 7, 1995**Citation:** (1996) ILR Delhi 121**Hon'ble Judges:** D.K. Jain, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner was employed as an Accounts Clerk by the All India Khadi and Village Industries Board on December 13, 1956. After Khadi and Village Industries Commission (hereinafter referred to as the Commission) was established u/s 4, of the Khadi and Village Industries Commission Act, 1956 (for short the Act), the services of the petitioner were taken over by the Commission. The petitioner was posted and all through worked in the Khadi Gramodhyog Bhawan, New Delhi. The management of Khadi Gramodhyog Bhawan (hereinafter referred to as the Management), placed the petitioner under suspension on October 13, 1970 and eventually served a charge sheet dated December 22, 1970, accusing him of certain irregularities and embezzlement of funds. The petitioner denied the allegation. His services were terminated. Aggrieved by the said termination of his services, the petitioner sent a notice of demand to the Management on May 16, 1972 asking for his reinstatement. Since his request was not acceded to, the petitioner raised an industrial dispute. The conciliation proceedings having failed. the Lt. Governor, Delhi referred the dispute for adjudication of the Presiding Officer, Labour Court, Delhi by a notification dated February 16, 1973 and the dispute specified in the order of reference was :

"Whether services of Shri Nand Kishore Jain have been terminated illegally and/or without any justification and if so, to what relief is he entitled and what directions

are necessary in this respect."

2. Before the Labour Court, while supporting its action of termination of services of the petitioner, the Management raised three preliminary objections, the one relevant presently being in the following terms :

"That the Khadi Gramodhyog Bhavan is a unit of Khadi & Village Industries Commission, which was set up under an Act of parliament, namely the Khadi & Village Industries Act, 1956 (Act No. 61 of 1956). Having regard to the provisions of the said Act, it is clear that the activities of the Commission are carried on by or under the authority of the Central Government. As such the appropriate Government in the case of the Bhavan is the Central Government. The present reference made by the Lt. Governor is, Therefore, ultra virus his powers and the present reference cannot, Therefore, be entertained by this Hon"ble Tribunal."

On the pleadings of the parties, the Labour Court framed the following preliminary issues :

"(1) Whether a demand, was made on the management in respect of this subject matter of the reference ? If not, its effect ?

(2) Whether the reference is ultra virus of the powers of the Government for the reasons given in para 2 of the preliminary objections in the written statement ?

(3) Whether the Khadi Gramodhyog Bhavan is not an industry ?

3. During the course of arguments before the Labour Court the management did not press the preliminary issue No. 3. By its award dated October 11, 1973, which is impugned in this writ petition, the Labour Court found issues No. 1 and 3 in favor of the petitioner. On issue No. 2 the Labour Court returned the finding that the Appropriate Government was the Central Government and as such reference in the case could only be made by the Central Government and not by the Delhi Administration and, Therefore, adjudication of the dispute could not be made in the reference.

4. In view of the said award, holding that the Central Government was the Appropriate Government to refer the disputes for adjudication, the petitioner, making a specific mention of Labour Court's finding regarding reference by the State Government, filed a statement of claim before the Chief Labour Commissioner (Central) Ministry of Labour and Rehabilitation, with a request that the industrial dispute raised by him may be referred for adjudication by the Central Government. By a communication dated July 30, 1974, the Chief Labour Commissioner (Central) informed the petitioner that the Delhi Administration was the Appropriate Government in the matter and, Therefore, advised him to approach the concerned State labour authorities in the matter.

5. Aggrieved as left in the lurch, the petitioner has filed this writ petition under Articles 226 and 227 of the Constitution seeking a writ of certiorari or any other appropriate writ, order or direction quashing the award dated October 11, 1973 in so far as it holds that the Delhi Administration is not the Appropriate Authority to make the reference, with a further direction to the Labour Court to adjudicate upon the dispute on merits. In the alternative, the petitioner prays for quashing of the aforesaid communication dated July 30, 1974 whereby the Central Government has declined to make a reference, with further direction to the Central Government to examine the making of the reference in the case by proceeding on the basis that it is, the Appropriate Government for the purpose. Presiding Officer, Labour Court is cited as respondent No. 1, Respondent No. 2 is the Delhi Administration, through Secretary (Labour); respondent No. 3 is the Management of Khadi Gramodhyog Bhavan and respondent No. 4 is the Union of India through the Secretary, Ministry of Labour & Rehabilitation.

6. Although Rule was issued as far back as in November 1974 and all the respondents reportedly served, counter-affidavit has not been filed by any of the respondents and they remained unrepresented even at the time of hearing. I have heard Mr. V. P. Chaudhry, Senior Advocate, for the petitioner and gone through the award

7. Mr. Chaudhry has contended that the Labour Court fell into error in holding that the Appropriate Government in the matter of reference was the Central Government. His argument is two fold : (i) the companies/corporations/bodies in respect of which the appropriate Government is the Central Government has been enumerated in Section 2(a)(i) of the Industrial Dispute Act, 1947 and respondent No. 3 not being one of those mentioned there, the Commission is not an industry which is being carried on under the authority of the Central Government; and the Commission is not an industry which is being carried on under the authority of the Central Government; and (ii) that the Act nowhere lays down that the Commission would act on behalf of the Central Government and infact a perusal of the functions of the Commission, as enumerated in Section 15, of the Act, indicates that the Commission cannot be said to be performing any substantial Government functions. Alternatively, it is submitted that if the view taken by the Labour Court that the Central Government is the Appropriate Government to make a reference is found to be correct, the refusal of the Central Government to make a reference is illegal and the Central Government has no option but make a reference to the Labour Court for adjudication of the dispute raised by the petitioner and a declaration in that behalf may be made.

8. The prime question arising for consideration is as to which is the Appropriate Government in the matter viz., the Central Government or the State Government ? Section 2(a) of the Industrial Disputes Act defines the term "Appropriate Government". Relevant portion whereof is extracted below :

"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 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..... or Industrial Finance Corporation of India..... etc., a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute the State Government; "

9. It would appear that sub-section (i) of the said Section, defining the expression Appropriate Government is in two parts. Clause (i) stipulates the industrial undertaking for whom the Central Government will be the Appropriate Government while clause (ii) is residuary and lays down that in respect of industrial undertakings not falling in clause (i) the appropriate Government would be the State Government. Thus, the crucial question for determination is firstly whether the Commission falls within the ambit of clause (i) of sub-section (a) of Section 2, of the Industrial Disputes Act and is an industry either : (a) carried on by or under the authority of the Central Government or (b) run by a railway company or (c) is a controlled industry specified in this behalf by the Central Government or (d) if the industrial dispute concerns one of the specific concerns/companies mentioned in the clause. If so, the Appropriate Government for it would be the Central Government else it would be the State Government. The position will be same for Khadi Gramodhyog Bhavan because carrying on of its activities by the Commission by itself or through any other person will not alter the position it will continue to be an industry carried on by or under the authority of the Central Government within the meaning of Section 2(a)(i) of the said Act. Apparently, the Commission's name does not figure as such in clause (i) it is not a controlled industry within the meaning of the clause nor is it run by the railways and so does not fall within the ambit of categories (b), (c) and (d), mentioned above.

10. As to whether the Commission is an industry carried on or run by or under the authority of the Central Government, the learned Labour Court, after examining various provisions of the Act, providing that there shall be a commission with effect from the date the Central Government notifies, which it did, it was a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, can sue or be sued in its name, its Chairman, Vice-Chairman, members of the Board were to be nominated by the Central Government, which also was to appoint its Secretary and the Financial Adviser it could issue directions to the Commission; the funds were to be provided by it; the Commission had to frame its budget and get it approved by the Central Government; after approval spend within the limits prescribed and submit returns.

Statements and such other particulars that the Central Government may ask for; the Central Government may dissolve the Commission on which its property and funds were to vest in it, found, in view of it all, and following the decision of the Punjab High Court in [Cantonment Board, Ambala Cantt. Vs. State of Punjab and Others,](#), that the Commission was an industry being carried on by or under the authority of the Central Government, which was the Appropriate Government, and as such the reference by the Lt. Governor was illegal.

11. Mr. Chaudhry's contention is that the omission of the Commission from the list of various other statutory corporations mentioned in the Section leads to the conclusion that the legislature never intended to treat it as an industry being carried on by and under the authority of the Central Government. I do not find much substance in it. From a bare reading of the Section, extracted above, it is evident that the list of corporations/companies mentioned therein is not the only criteria and the said sub-section brings within its ambit all other industries which are carried on by or under the authority of the Central Government etc., even if its name does not figure therein. However, learned counsel's other contention that the Labour Court was in error, for reasons recorded, to hold that the Commission is an industry carried on by or under the authority of the Central Government has force.

12. The Commission is established u/s 4, of the Act as a body corporate having perpetual succession with power to acquire, hold and dispose of property and to contract, and may by the said name sue and be sued. Section 15, of the Act, inter alia, stipulates the functions of the Commission and lays down that the functions of the Commission shall generally be to plan, organise and implements programmes for the development of Khadi & Village industries, which include the sale and marketing of khadi or all products of village industries. Section 17A, 1 enables the Commissions to receive gifts, grants donations or benefactions from the government or any other person for the purpose of development of village industries. Section 19, provides that the Commission shall have power to spend such sums as it thinks fit on purposes authorised by the Act. Section 21, clothes the Commission with the power to borrow on the security of the khadi fund or the village industries fund or any other asset for any purposes for which such funds may be applied. Section 22, lays down that all liabilities incurred by and all contracts entered into with and all matters and things engaged to be done by it or for the Central Government in connection with the development of Khadi or Village industries at any time after January 14, 1953, and before the commencement, of the Act, shall, after such commencement be deemed to have been incurred by, entered into with or engaged to be done by or for the Commission.

13. In Heavy Engineering Mazdoor Union v. State of Bihar, (1969-II-LLJ-548) (SC) a question arose, whether an industry carried on by a company incorporated under the Companies Act was an industry carried on "under the authority of" the Central Government and it was competent to make a reference under the Industrial

Disputes Act. The Supreme Court pointed out that in the absence of a statutory provision, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State; such an inference that the Co-operative (sic) is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions; and an industry carried on by or under the authority of the Central Government means either the industry, carried on directly by a department of the Government, such as the Posts & Telegraph or the Railways, or one carried on by such department through the instrumentality of an agent. It was also pointed out that where a statute setting up a corporation states that the corporation should be an agent of the State then, it could be easily identified as such. In para 4 of the judgment it was held that the expression "an industry carried on by or under the authority, of the Central Government" as used in the definition of expression Appropriate Government in Section 2(a)(i) of the Industrial Disputes Act would mean "pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master." The Supreme Court observed that although the entire share capital of the Heavy Engineering, Corporation Ltd, was contributed by the Central Government and extensive powers had been conferred on it, yet the Corporation could not be said to be an industry carried on by or under the authority of the Central Government.

14. In the instant case, the grounds forming basis of learned Labour Court's findings, pointed out above, are strict Administrative and Financial Control, in that the Commission is a creation of the statute, the Central Government nominates its top ranking functionaries, provides funds and exercises control on finances, nonetheless, the Commission has power to hold and dispose of property, can enter into contract, and has to perform and delve in commercial activities, which it has to do as statutory body on its own.

15. It is no doubt true that u/s 16, the Commission has been enjoined to be bound by the directions of the Central Government but the provisions of Section 22, make it clear that all liabilities incurred by on all contracts entered into and all matters relating to and in connection with the development of Khadi and Village industries by the Central Government shall be deemed, after the commencement of the Act, to have been incurred by, entered into with, or done by the Commission itself. The Commission, a body corporate. Acts on its own behalf and carries on commercial activities, like any other commercial establishment, which are necessary for the promotion and development of Khadi and Village Industries and whatever liabilities it incurs in connection therewith are incurred by it on its own behalf and the Central Government is not liable for the same despite the fact that all its activities may be supervised by the Central Government. The Commission is performing commercial functions and not carrying on any sovereign functions of the Central Government. As is clear from various provisions of the Act, briefly referred to above, it is

commercial establishment like any other commercial corporation carrying on purely Commercial activities for the promotion of Khadi and Village Industries. So is Khadi Gramodyog Bhawan. That being so, neither the Commission nor Khadi Gramodhyog Bhawan could be said to be agent, wing or a part of the Central Government, however, pervasive the control of the Central Government might be in its management. The Commission carries on business or industry not on behalf of the Central Government but on its own behalf.

16. A similar view has been expressed in a Bench decision of the Patna High Court in Bihar Khadi Gramodyog Sangh. Muzaffarpur v. State of Bihar 1977 L IC 466. In the case also a question had arisen as to which was the Appropriate Government in relation to Bihar Khadi Gramodyog Sangh which was financed by the Central Government, through the Commission which supervised and controlled the activities of the said Sangh. Relying on the judgment of the Supreme Court in Heavy Engineering Mazdoor Union's case (supra) it was held that neither the Commission nor the Sangh could be brought within the sweep of the phrase "under the authority of". The ratio of this decision squarely applies to the facts of the instant case.

17. Similarly, this Court (Avadh Behari, J) dealing with a like case in Central Warehousing Corporation v. Delhi Administration 1984 L IC 360, held that the Central Warehousing Corporation, prior to its inclusion in the list of specific undertakings mentioned in clause (i) by the Amending Act 46 of 1982, a statutory Corporation established for the purpose of "warehousing of agricultural produce and certain other commodities and for matters connected therewith," though it is a body corporate with perpetual succession and common seal and its entire capital is held by the Central Government and extensive control over its affairs is vested in the Central Government, is not a servant or agent of the Central Government. It is only a commercial corporation and is not carrying on any sovereign functions of the Central Government and, Therefore, the Central Government was not the Appropriate Government u/s 2(A)(i) of the Industrial Dispute Act.

18. In Cantonment Board, Ambala's case (supra) relied upon by the Labour Court, the Punjab High Court was dealing with the case of Cantonment Board created and regulated by the provisions of the Cantonment Act, whereby the management of Cantonment was placed in the hands of the Cantonment Boards. Considering the scope of the creation of the Cantonment Boards. Considering the scope of the creation of the Cantonment Boards by the statute and the powers of the Central Government over the administration of such Cantonment through the Cantonment Boards, the Court held that the Cantonment Board is, infact, directly carrying on the work of the Government. Evidently the Punjab High Court came to this conclusion because the Cantonment Board was performing in substance the government functions and not commercial functions, as in the present case. As aforesaid in Heavy Engineering Mazdoor Union's case (supra) clear distinction has been brought out in the performance of Government functions and commercial functions. The

Supreme Court observed that while a Corporation performing the Government functions could be said to be an agent of the Government but the one performing commercial functions could not be so held. Thus the ratio of the Punjab High Court's judgment is not applicable to the facts of the instant case and the Labour Court was in error on placing reliance on the same.

19. In view of the foregoing discussion I am, of the opinion that the Labour Court fell into error in holding that the Appropriate Government was the Central Government and, Therefore, its order, declining to adjudicate upon the dispute on merits cannot be sustained. The case of the petitioner, in my view, falls in the residuary clause and the Appropriate Government would be the State Government, which rightly made the reference. In that view of the matter, the alternative contention of Mr. Chaudhry is rendered infructuous.

20. Consequently the impugned award of the Labour Court, to the extent it holds that the Lt. Governor was not competent to make the reference in petitioner's case, is set aside and the matter is remitted back to the Labour Court for adjudication on merits. Since the reference was made as far back as in 1973, the learned Court should try to decide it as expeditiously as possible. Rule is made absolute.