SUPREME COURT OF INDIA

Tata Memorial Hospital Workers Union

Vs.

Tata Memporial Centre

C.A.No.6394 of 2010

(Altamas Kabir,H.L.Gokhale and Cyriac Joseph JJ.)

09.08.2010

JUDGEMENT

GOKHALE J.

1. Leave granted.

2. This appeal is directed against the judgment and order of a Division Bench of the Bombay High Court dated 10.2.2009 in Appeal No.133 of 2002 arising out of Writ Petition No. 2148 of 2001, whereby the Division Bench has held that for the first respondent establishment, the Central Government was the `appropriate government' for the purposes of application of Section 2(3) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (hereinafter referred to as the M.R.T.U. and P.U.L.P. Act) read with Section 2(a) of the Industrial Disputes Act 1947 (hereinafter referred to as the I.D. Act). The Division Bench has held that the State Government was not the `appropriate government' for this purpose. Consequently the Applications concerned in the present matter filed under the MRTU and PULP Act, namely the Application of the second respondent for cancellation of the status of the applicant as the recognized

union under respondent No. 1, and Application for substitution of second respondent in place of the appellant, as the recognized union, were held to be non- maintainable. The appellant is aggrieved by the finding that the State Government is not the appropriate government and that the MRTU and PULP Act has no application to the first respondent establishment. It will result into automatic denial of its status as the recognized union under the MRTU and PULP Act and also into denial of the remedies available to the appellant and to the employees, of the first respondent, (against unfair labour practices, if any) and hence this appeal by special leave. The right of the appellant to represent the employees of the first respondent (numbering over 1300) is thus, at stake.

3. The appellant is a Trade Union, registered under the Trade Unions Act 1926 and the employees of the first respondent are its members. It is already registered under Chapter III of the above referred MRTU and PULP Act as the recognized union for the employees under the first respondent by an order passed way back on 2.12.1985 by the Industrial Court, Mumbai. Respondent No.2 `Tata Memorial Hospital Kamgar Sanghatana' (i.e. workers association) is another trade union functioning under the first respondent. By filing Application MRTU No. 15 of 1994 before the Industrial Court, Mumbai, the respondent No. 2 sought cancellation of the recognition of the appellant union under Section 13 of the MRTU and PULP Act. Thereafter by filing another Application MRTU No.16 of 1994, the second respondent sought its own recognition in place of the appellant union under Section 14 of the MRTU and PULP Act. Both these Applications Nos. 15 and 16 of 1994 were heard together. Oral and documentary evidence was led by parties. The report of the Investigating officer appointed for the verification of the membership of the two trade unions was considered. The first respondent in its written statement raised an objection to the maintainability of these proceedings under MRTU and PULP Act by submitting that the `appropriate government' for the first respondent was the Central Government and not the State Government, and hence, the proceedings under the MRTU and PULP, were not maintainable.

4. The Application (MRTU) 15 of 1994 had been filed on the footing that the registration of the appellant as a trade union itself had been cancelled by the Registrar of Trade Unions under the Trade Union Act, 1926. The appellant pointed out to the Industrial Court that the order of cancellation was misconceived and had in fact been stayed by the Bombay High Court by its order passed in the Writ Petition No. 452 of 1994. Thereupon, the second respondent conceded this position and filed a pursis (memo) that Application (MRTU) No. 15 of 1994 be allowed to be withdrawn. The Industrial Court disposed of the two proceedings by its common judgment and order dated 29.6.2001. In that order it recorded that Application MRTU No. 15 of 1994 was being disposed of for want of prosecution. As far as the Application No. 16 of 1994 is concerned, the Industrial Court accepted the report of the Investigating Officer whereunder he had held that during the relevant period for consideration of the Application under section 14 of the MRTU & PULP Act, the valid membership of the appellant union was more than that of the second respondent union. While deciding so, it examined the material on record, considered the rival submissions and held that the `appropriate government' for the first respondent was the State Government. Therefore, although the two Applications were held to be maintainable under the MRTU and PULP Act, the Application No. 16 of 1994 was dismissed on merits.

5. The first respondent filed Writ Petition No. 2148 of 2001 to challenge this judgment and order. The petition came to be dismissed by a Single Judge of the High Court by holding that the first respondent is an autonomous body and though the Central Government was funding the first respondent partially, it had only a partial control thereof. The Single Judge accepted the findings of the Industrial Court on the issue of appropriate government to be just, legal and proper and, therefore, dismissed the Writ Petition, by his order dated 29.10.2001. This was on consideration of the judgment of this court in Steel Authority of India & Ors. vs. National Union Waterfront Workers & Ors. (2001) 7 SCC 1 (which had been rendered in the meanwhile on 30.8.2001). This order of the Single Judge has come to be reversed by the impugned judgment and order passed by the Division Bench. The Division Bench has held that the Governing Council of the first respondent was managing the institution as a delegate of the Central Government.

This was also on basis of its consideration of the judgment in Steel Authority of India & Ors. (supra). The Division Bench held that the Central Government was the appropriate government for the first respondent and allowed the appeal.

Consequently, it set aside the orders passed by the Single Judge as well as by the Industrial Court.

6. Being aggrieved by this judgment and order of the Division Bench the present appeal by special leave has been filed. The appeal raises the question as to whether the Division Bench correctly applied the law laid down by this Court in Steel Authority of India (Supra) to the facts of the present case. Though the second respondent has been described as a proforma respondent, notices were issued to both the respondents and the affidavit of service with proof has been filed by the appellant with respect to both of them. The petition has been opposed by the first respondent by filing an exhaustive counter and the appellant has filed a rejoinder thereto. Mr. Colin Gonsalves, learned Senior Counsel has addressed us on behalf of the appellant, whereas Mr. Soli J.Sorabjee, learned Senior Counsel, has defended the order of the Division Bench. Both the parties have submitted their written submissions and we have considered the same also.

7. Necessary Relevant Facts Before dealing with the rival submissions on the issue before the Court, viz. as to whether in the facts of the present case the central government or the state government is the `appropriate government,' it will be desirable to refer to the necessary relevant facts. The trustees of a public charitable trust known as Sir Dorabji Tata Trust, established sometime in the year 1940, a hospital in Mumbai, named as the Tata Memorial Hospital for the Treatment and Cure of Cancer and Allied Diseases. The hospital was then being maintained out of the funds of the trust and also from the grant made available from time to time by the Central Government and by the then Government of Bombay.

8. The Government of India was desirous of establishing an Indian Cancer Research Centre for Post-Graduate Teaching and Research in Cancer and the same was established in collaboration with

the trustees of Sir Dorabji Tata Trust by an agreement dated 7.10.1953. The Government of India gave the initial grant for that Centre for setting up of a laboratory on a portion of the land belonging to the trust and also undertook to provide recurring expenditure in respect of salaries of the staff and contingencies of the management of the said Center.

9. The trustees of Sir Dorabji Tata Trust subsequently decided to dedicate the hospital to the Nation with all its assets, including its funds and the plots of land. They requested the Government of India to takeover its control and management with effect from 4.2.1957. Accordingly, an agreement was entered into between the trustees and the Central Government on 4.2.1957 and under clause (1) thereof, the government agreed to takeover control and management of the hospital and to manage it at its own expenses from 1.4.1957. Under clause (2) of the agreement, the management of the hospital was to rest in the hands of the Governing Board consisting of seven members of the Board. Three of them were to be nominated by the Government of India and three by Sir Dorabji Tata Trust. The Superintendent of the Hospital was to be the ex-officio seventh member of the Governing Board and its Secretary. Clause (3) of this agreement provided as follows:

"The Trustees of Sir Dorabji Tata Trust shall convey, assign, transfer and deliver to the Government of India the immoveable properties and moveable properties and assets of the hospital including the Cancer Infirmary Fund and the assets of the Indian Cancer Research Centre and the three plots refereed to above" (i.e. plots 107, 108 & 109 of Scheme No.60, Naigaum Estate,Mumbai).

10. The Trustees accordingly, filed a suit being suit No. 568 of 1957 in the Bombay City Civil Court for framing a Scheme and for giving effect to and incorporating the said agreement dated 4.2.1957. The City Civil Court passed a decree on 22.3.1957 and sanctioned the scheme as annexed to the schedule. The relevant part of the court's order recorded that the properties to be conveyed, transferred or assigned by the trustees to the government being immovable properties described in schedule `B' thereto are hereby vested in the government.

The administrative control of the Tata Memorial Hospital and the Indian Cancer Research Centre was thereafter transferred to the Government of India. It first came under the Ministry of Health and thereafter under the Department of Atomic Energy with effect from 1.2.1962.

11. The Tata Memorial Centre has come to be specifically mentioned in the rules for allocation of business of Government of India framed under Article 77 of the Constitution of India. The President of India in exercise of his powers under Article 77, has framed by order dated 14.1.1961, the Rules for allocation of business of the Government of India. Rule 2 thereof deals with the allocation of business and it states that the business of the government shall be transacted in the Ministries, Departments and Secretariats, as specified in the first schedule to these rules (all of which are referred to as the departments). Item 22 of the first schedule to the said rules, deals with the Department of Atomic Energy and item 10 of the annexure to the schedule concerning Department

of Atomic Energy reads as followed:

"10. All matters relating the Tata Memorial Centre, Bombay."

12. Subsequently, an agreement was entered into between the Government of India and the trustees of Sir Dorabji Tata Trust on 6.1.1966, and the two institutions viz. Tata Memorial Hospital and Indian Cancer Research Centre were amalgamated into an institution thereafter known as the Tata Memorial Centre i.e. respondent No.1 herein. The Tata Memorial Centre was registered as a Society under the Societies Registration Act 1860 and also as a Public Trust, under the Bombay Public Trust Act 1950. Under the rules and Regulations of this Society, the administration and management of the Centre vests in a Governing Council under Rule 3 thereof, and this council is the executive body of the Centre. The council is constituted under Rule 4 thereof. Rule 3 and 4 (i) of these Rules and Regulations read as follows:

3. Administration and Management : Subject to these Rules and such rules as may hereafter be made from time to time, the administration and management of the Centre shall vest in the Council, which shall be the executive body of the Centre.

4. Constitution of the Council:

(i) The Council shall consist of:

(a) Four members appointed by the Government of India;

(b) Three members appointed by the Trustees of the Sir Dorabji Tata Trust;

(c) The Director of the Centre (ex-officio) The Director, TMH and the Director, CRI will be permanent Invitees to the meetings of the Council. PROVIDED that, to represent other interests, not more than two additional members may be co-opted by the Council, for such periods as the Council may decide with the concurrence of the Government of India and the Trustees of the Sir Dorabji Tata Trust.

13. The question for our consideration is whether the first respondent functions under the authority

of the Central Government as its delegate as held by the Division Bench or is functioning as an independent entity. This will enable us to decide as to whether the Central Government or the State Government is the "appropriate government" for the first respondent. We have also to keep in mind that we have to decide this issue in the context of determination of an application for recognition of a trade union.

Statutory Framework

14. As stated earlier, the two Applications filed before the Industrial Court, Mumbai which had led to the present Special Leave Petition were filed under Sections 13 & 14 of the MRTU and PULP Act 1971. These Sections 13 & 14 appear in Chapter-III of the MRTU & PULP Act which Chapter deals with Recognition of unions. Section 13 deals with Cancellation of recognition and suspension of rights of a recognized union on the conditions stipulated therein. Section 14 deals with Recognition of other union in place of a union already registered as a recognized union and conditions therefor. As the preamble of this Act lays down, one of the objectives of this Act is to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations;

and to confer certain powers on unrecognized unions. The other objective of this Act is to prevent unfair practices with which, we are not directly concerned in the present matter.

15. Since the question raised in the matter is whether the two applications filed under Sections 13 and 14 of MRTU and PULP Act were maintainable or not, the same will depend upon as to whether the State Government is the `appropriate government' for the first respondent. Section 2 of the MRTU and PULP Act is relevant in this behalf. It deals with the extent, commencement and application of the Act. We are concerned with sub-Section (3) thereof which reads as follows:

"(1) .....

(2) .....

(3) Except as otherwise hereinafter provided, this Act shall apply, to the industries to which the Bombay Industrial Relations Act, 1946, Bom. XI of 1947, for the time being applies, and also to any industry as defined in clause (j) of section 2 of the Industrial Disputes Act, 1947, XIV of 1947, and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act;

Provided that the State Government may by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cease to apply to that industry and, thereupon, section 7 of the Bombay General Clauses Act, 1904, Bom. 1 of 1904, shall apply to such cessor, as if this Act has been repealed in relation to such industry by a Maharashtra Act."

16. It is not disputed that the first respondent is an `industry' within the concept of industry as defined in Section 2(j) of the Industrial Disputes Act 1947.

The respondent No. 1 is admittedly not covered under the Bombay Industrial Relations Act 1946. The question is whether in relation to any industrial dispute concerning the first respondent, the State Government is the `appropriate government' under the Industrial Disputes Act 1947.

17. It, therefore, becomes necessary to look into the definition of `appropriate government' under the Industrial Disputes Act 1947. Under Section 2(a) of the Industrial Disputes Act 1947 `appropriate government' means;

(i) in relation to any industrial dispute concerning an industry carried on by or under the authority of the Central Government, (or concerning, industries specifically mentioned in this sub- section starting from a railway company upto a major port), the Central Government; and (ii) in relation to any other industrial dispute, the State Government.

Thus, it is clear that under the Industrial Disputes Act, the Central Government is the `appropriate government' in relation to the industrial disputes concerning the industries specified under Section 2 (a) (i) and for the industries carried on by or under the authority of the Central Government. Excluding these two categories of industries in relation to any other industrial dispute, it is the State Government which is the `appropriate government'.

18. Entry 22 in list III - Concurrent List to the Seventh Schedule to the Constitution of India relates to `Trade Unions; Industrial and Labour disputes'. Entry 23 thereunder is `social security and social insurance; employment and unemployment'. Entry 24 is `welfare of labour including conditions of work, provident fund, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits'. Subject to the provisions contained in sub-clauses (1) and (2) in Article 246, the Legislature of a State can also make laws on these subjects, and this is how the MRTU and PULP Act 1971 makes provisions for recognition of trade unions for collective bargaining, and for prevention of unfair labour practices.

It is also in the fitness of things that the Industrial Disputes Act which is the principal Central Act for investigation and settlement of Industrial Disputes lays down that for the industrial disputes concerning the specified industries and for those carried on by or under the authority of the Central Government, the Central Government will be the `appropriate government', but in relation to any other industrial dispute the State Government will be the `appropriate government'. It, therefore, becomes necessary to examine the phrase `any industry carried on by or under the authority' of Central Government on this background while applying it to a particular industry and in the instant case, to the first respondent.

19. Explanation of the concept of appropriate government by the Judiciary:-- The appeal raises the question as to whether the Division Bench has correctly applied the law laid down in Steel Authority of India (supra). The Steel Authority of India judgment however once again reiterates the law laid down way back in Heavy Engineering Mazdoor Union vs. The State of Bihar (1969) 3 SCR, 1995, though with a little divergence. It therefore becomes necessary to examine as to how the concept of appropriate government has been explained by the judiciary in the leading decisions. That will enable us to find out as to what are the tests in this behalf which have evolved over the years. In Heavy Engineering case, the State of Bihar had referred an industrial dispute between the Heavy Engineering Corporation Ltd., a company wholly owned by the Central Government and its workmen for its adjudication by the Industrial Tribunal. The appellant mazdoor union challenged the reference contending that the `appropriate government' to refer the dispute was the Central Government and not the State Government. The High Court rejected the contention, and hence the matter was carried to this Court. This Court noted that the Heavy Engineering Corporation is a Government company within the meaning of Section 617 of the Companies Act, since its entire share capital was contributed by the Central Government and its shares were registered in the name of the President of India and officers of the Central Government. The memorandum of association and the articles of association of the company conferred large powers on the Central Government including the power to give directions as regards the functioning of the company. The wages and salaries of the employees were also determined in accordance with these directions. The Directors of the company were appointed by the President of India. The Company was described in its standing orders as a Government Undertaking.

20. It was accepted by the corporation that it could not be said to be an `industry' carried on by the Central Government. The limited issue was whether it could be regarded as an `industry', carried on under the authority of the Central Government. The question was as to how to construe the phrase `under the authority of Central Government'.

This court held;

....There being nothing in s. 2 (a) to the contrary, the word `authority' must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to another to do

an act. A person is said to be authorized or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act. For instance, if A authorizes B to sell certain goods for and on his behalf and B does so, incurs no liability for so doing in respect of such goods and confers good title on the purchaser. There clearly arises in such a case the relationship of a principal and an agent. The words "under the authority of"

means pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association." (underlining supplied)

21. This Court noted that an incorporated company has a separate existence and the law recognizes it as a juristic person, separate and distinct from its members. Its rights and obligations are different from those of its shareholders.

Action taken against it does not directly affect its shareholders. The company so incorporated derives its powers and functions from and by virtue and memorandum of association and its articles of association. The mere fact that the entire share capital of the company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The court noted that a notice to the President of India and the officers of the Central Government, who hold between them all the shares of the company would not be a notice to the company nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

22. The Court noted that the extensive powers are conferred on the Central Government including the power to give directions as to how the company should function, the power to appoint its Director and even the power to determine the wages and salaries payable by the company to its employees but these powers were derived by the company's memorandum of association and the articles of association and not by reason of the company being an agent of the Central Government. The court thereafter observed as follows:

..... The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the state as in Graham vs. Public Works Commissioners ([1901] 2 K.B. 781) where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they

have the power of contracting as principals. In the absence of a statutory provision, however, 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. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. (see The State Trading Corporation of India Ltd v. The Commercial Tax Officer, Visakhapatnam [1964] 4 SCR 99 at 188, and Tamlin v. Hannaford [1950] 1 K.B. 18 at 25, 26. Such an interference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and non commercial functions. (cf London County Territorial and Auxiliary forces Association v. Nichlos) [1948] 2 All E.R. 432.

(underlining supplied)

23. Then the Court looked into the definition of `employer' as given in Section 2 (g) of the Industrial Disputes Act. As this section provides, an employer under clause (g) means, an employer in relation to an `industry' carried on by or under the authority of any department of the Central Government or the State Government, the Authority prescribed in that behalf, or where no such authority is prescribed, the head of the Department. No such authority was prescribed in regard to the business carried on by the respondent company. The Court observed that the definition of the `employer' under the Industrial Disputes Act on the contrary suggests that an industry carried on by or under the authority of the Government means either the industry carried on directly by a department of the Government such as the posts and telegraphs or railway, or one carried on by such department through the instrumentality of an agent. All these facts led this Court to hold that the Heavy Engineering Corporation could not be said to be an `industry' carried on under the authority of the Central Government.

24. We have referred to the Judgment in Heavy Engineering Mazdoor Union (Supra) extensively for the reason that it has been followed consistently including the last relevant judgment of the Constitution Bench in Steel Authority of India Ltd. (Supra), though with a slight divergence. The next judgment of significance after Heavy Engineering Mazdoor Sangh, is Hindustan Aeronautics Ltd. vs. Workmen reported in (1975) 4 SCC 679. In that matter a bench of three judges was concerned with the dispute between the management of the Barrackpore branch of the appellant Government Company situated in West Bengal and its employees. The appellant had challenged the Award of the Fifth Industrial Tribunal, West Bengal and one of the challenges was to the competence of the Government of West Bengal to make the reference of the industrial dispute. It was contended that the Barrackpore branch was under the direct control of the Bangalore Division of the Company and since it was a Government Company constituted under section 617 of the Companies Act, (the shares of which were entirely owned by the Central Government), the reference ought to have been made either by the Central Government or by the Government of Karnataka. This Court negatived the contention. It noted that the Barrackpore Branch was a separate branch and for the purposes of this Act it was an industry carried on by the Company as a separate unit. This court followed the dicta in Heavy Engineering Mazdoor Union (supra) and observed in

para 4 as follows:

"The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate government concerned in the maintenance of the industrial peace was the West Bengal Government. The grievances of the workmen of Barrackpore were their own and the cause of action in relation to the industrial dispute in question arose there. The reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid. (underlining supplied)

25. In Rashtriya Mill Mazdoor Sangh, Nagpur vs. Model Mills, reported in 1984 (Supp) SCC 443, a reference (though under the Bombay Industrial Relations Act, 1946) of the demands of the employees for payment of bonus was challenged on the ground that an authorized controller under the Industries (Development and Regulation) Act, 1951 had been appointed in respect of the industrial undertaking and since the undertaking was being run by an authorized controller under the authority of a department of the Central Government, the reference under the Bombay Industrial Relations Act, 1946 was not competent. A bench of three judges of this Court once again referred to the interpretation of the expression `under the authority of' rendered in Heavy Engineering Mazdoor Union's case. The Court noted that in reaching its conclusion in Heavy Engineering Mazdoor Union's case (supra) this Court had approved the view of Calcutta High Court in Carlsbad Mineral Water Mfg. vs. P.K. Sarkar AIR 1952 Calcutta Page 6 wherein a Division Bench that Court, had held that business which is carried on by or under the authority of the Central Government must be a Government business. The High Court had further held that in any industry to be carried on under the authority of the Central Government it must be an industry belonging to the Central Government, that is to say, its own undertaking. The Court held in para 17;

"The fact that the authorized controller is appointed by the Central Government and that he has to work subject to the directions of the Central Government does not render the industrial undertaking an agent of the Central Government and therefore, could not be said to be an establishment engaged in an industry carried on by or under the authority of the Central Government."

26. The Judgment in Rashtriya Mill Mazdoor Sangh (supra) was followed by the Judgment in Food Corporation of India Workers Union vs. Food Corporation of India reported in (1985) 2 SCC 294. Therein, the Court was concerned with the Writ Petition filed by the employees seeking the regularization of their services under the Contract Labour (Regulation and Abolition) Act 1970 (for short the CLRA Act). In that matter, inspite of the fact that FCI is a specified industry under Section 2(a) (i) of the Industrial Disputes Act 1947, this Court referred to the definition of `appropriate government' under the CLRA Act 1970. It referred to judgments in Heavy Engineering Mazdoor Union and Rashtriya Mill Mazdoor Sangh (supra) with approval, and held that for the regional offices and warehouses which were situated in various states, the State Governments were the `appropriate Governments' and not the Central Government.

27. The scheme of the CLRA Act 1970 came up for consideration before a bench of three Judges in Air India Statutory Corporation vs. United Labour Union (1997) 9 SCC 377. The Court was concerned with the question as to whether the Central Government was the competent appropriate government for the purposes of the notification which it had issued under that Act to abolish the Contract Labour system in the establishment of the appellant. The court held that the Central Government was the appropriate government. The definition of `appropriate government' under Section 2 (1) (a) of that Act was examined by this Court and which reads as follows:

"[(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;] A bench of three Judges, therefore, examined the efficacy of the judgments starting from Heavy Engineering Mazdoor Union case (supra). After examining the principles arising out of some of the leading judgments on Article 12 of the Constitution of India, such as those in the case of R.D. Shetty vs. International Airport Authority of India (1979) 3 SCC 489 and Ajay Hasia vs. Khalid Muzib Sehravardi (1981) 1 SCC 722 (a Constitution Bench Judgment), the Court held that corporations and companies controlled and held by the State Governments will be institutions of those states within the meaning of Article 12 of the Constitution. A Priori, in relation to corporations and companies held and controlled by the Central Government, the `appropriate government' will be the Central Government. In paragraph 28 the court observed : --- '28. From this perspective and on deeper consideration, we are of the considered view that the two Judge bench in Heavy Engineering Mazdoor Union case narrowly interpreted the words `appropriate government' on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14.' .....

28. The question concerning interpretation of the concept of `appropriate government' in Section 2 (1) (a) of the CLRA Act 1970 and in Section 2 (a) of the Industrial Disputes Act, 1947 was subsequently referred to a Constitution Bench in Steel Authority of India Ltd. vs. National Union Waterfront Workers, reported in [(2001) 7 SCC 1]. The Constitution Bench examined the relevant provisions and the judgments including those in the cases of R.D. Shetty and Ajay Hasia (supra). The question decided by Constitution Bench of this Court in Ajay Hasia was with respect to Jammu & Kashmir Regional Engineering College, Srinagar, which was registered as a society under the Jammu & Kashmir Registration of Societies Act 1898 and wherein it was held to be a State within the meaning of Article 12 of the Constitution.

29. In para 37 of the judgment in Steel Authority of India Ltd. (supra), this court held that merely because the government companies, corporations and societies are instrumentalities or agencies of the Government, they do not become agents of the Central or the State Government for all purposes.

The Court held as follows:

"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."

30. In para 38, this Court thereafter held as follows:

" 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. .....

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. (underlining supplied) 31. In para 39, this Court further held as follows:

"39. 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."

32. In the next para 40 the Constitution Bench states that it shall refer to the cases of this court on this point and thereafter examines in paragraphs 41 to 44 the earlier referred judgments in Heavy Engineering Mazdoor Union, Hindustan Aeronautics, Rashtirya Mill Mazdoor Sangh and Food Corporation of India (supra).

33. In paragraph 41 of the judgment, the Constitution Bench examined the Judgment in Heavy Engineering Mazdoor Union case. In Heavy Engineering Mazdoor Union the court had observed that an inference that the corporation was the agent of the Government might be drawn where it was performing in substance governmental and not commercial functions. The Constitution Bench disagreed with the distinction thus made between the Governmental activity and commercial function of Government Companies. Barring this limited disagreement, however at the end of para 41 the Constitution Bench observed that it is evident that the court correctly posed the question whether the State Government or the Central Government was the `appropriate government' and rightly answered it.

34. In paragraph 42, the Constitution Bench examined the judgment of Hindustan Aeronautics Ltd. (supra). The Constitution Bench noted that the judgment in Heavy Engineering Mazdoor Union case was followed in Hindustan Aeronautics and it had taken note of the factor that if there was any disturbance of industrial peace in Barrackpore, the `appropriate government' concerned for the maintenance of internal peace was the West Bengal Government. The court observed that the factors which weighed with the Court could not be said to be irrelevant.

35. In para 43 the Constitution Bench examined the judgment in Rashtriya Mill Mazdoor Sangh (supra) wherein although an authorized controller was appointed to replace the management of the respondent Model Mill, the Rashtriya Mill Mazdoor Sangh judgment had held that the undertaking could not be held to be carried on under the authority of the Central Government. The Constitution Bench quoted the observations from the judgment with approval.

36. In para 44 the Constitution Bench referred to the FCI case (supra). It noted that the FCI judgment had followed the judgments in Heavy Engineering Mazdoor Union and Rashtriya Mazdoor Mill Sangh (supra) to hold that the State Government was the `appropriate government' pertaining to the regional offices and warehouses of the FCI under the CLRA Act. At the end of this para the Constitution Bench concluded "we find no illegality either in the approach or in the

conclusion arrived at by the court in these cases." (underlining supplied)

37. In paragraphs 45 and 46, thereafter once again the Constitution Bench turned to the judgment in Air India case and in para 46 it concluded as follows:

" 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 Air India case."

(underlining supplied) Submissions on behalf of the Appellant

38. On this background the submission on behalf of the appellant was that way back since 1966 when the Tata Memorial Centre (T.M.C.) was constituted into a separate society and a public trust, it has all throughout functioned as an independent entity and it could not be considered to be a delegate of the Central Government. It was submitted that at the inception the Tata Memorial Hospital was set up out of the funds of Sir Dorabji Tata Trust and not of the Central Government.

The Government of India established the Indian Cancer Research Centre, but that was also under an agreement dated 7.10.1953 and in collaboration with the trustees of the Sir Dorabji Tata Trust. The Government of India did give the initial grant and undertook to provide recurring expenses in respect of the staff and contingencies of the management but the centre was established on the land belonging to the Sir Dorabji Tata Trust. Later on, the Central Government did take over the Hospital after the Trust decided to dedicate it to the nation. However, at all material times, part of the expenses of the Hospital have been met from the funds generated by the Hospital. After the formation of Respondent No. 1 as a registered society in 1966 also, the internal sources generate 1/3rd, (i.e approximately 25 crores out of 75 crores) of the funds which are utilized for running the Hospital. Thus, the following factors approved by the Industrial Court and the learned Single Judge were pressed into service on behalf of the appellants, i) In its inception the entire share capital and assets of T.M.C. were not solely owned or contributed by the Government of India in view of the donation by Dorabji Trust;

ii) T.M.C is not wholly run by the funds of Government of India. Its internal sources are generating 1/3rd fund which is utilized for running the hospital.

iii) Its governing Council has the direct control over the activities of T.M.C. The T.M.C is functioning under its own byelaws which suggest that the deep and intensive control is by the Governing Council.

iv) The T.M.C. employees are not the Government servants;

39. It was pointed out on behalf of the appellants that Mr. Muthuswamy the Chief Administrative officer of the first respondent had admitted in his evidence that there was no interference from the Central Government in the day-to-day activities of the first respondent and they were looked after by the Directors of the T.M.C. itself. The labour categories of the employees were employed either by the Directors or by the Officers of the council. He admitted that as far as functioning and administration was concerned, the first respondent was an autonomous body.

As laid down in the leading decisions on this issue from time to time, including the one in Steel Authority of India (supra) whether the industry is carried on by or under the authority of the Central Government is to be decided on the facts of each case.

In view of the facts which have come on record as above, it was submitted that the judgment of the Industrial Court could not have been faulted and since it was on the basis of the facts and circumstances placed on record, it was rightly left undisturbed by the learned Single Judge.

40. The judgment of the Division Bench was assailed also for laying emphasis on recital No. 6 of the agreement dated 6.1.1966 between the trustees of Sir Dorabji Tata Trust and Government of India and not the subsequent clauses of that agreement. It was pointed out that in recital No. 9 of that agreement, it was proposed to amalgamate the two institutions and to entrust the control and management to the newly created body under the agreement. It was emphasized that as per clause 4 of the agreement all subsequent acquisitions shall vests in the holding trustees and clause 5 provides that the Centre shall be under the direct management and control of the Council to be created.

41. It was submitted that the appellant trade union had been recognized way-back in the year 1985 under the MRTU and PULP Act and several proceedings had been initiated by both the parties under this Act. The first respondent had thus in a way accepted that the said act does apply to it and now it cannot be permitted to contend to the contrary. It was, therefore, submitted that the Division

Bench had erred in ignoring that once the society was formed and all the activities were transferred to the society, it could no longer be considered as a delegate of the Central Government and that the Division Bench seriously erred in its understanding of the law laid down by this Court.

Submissions on behalf of the first respondent

42. As against the submissions on behalf of the appellant, it was submitted on behalf of the first respondent that after the Hospital was dedicated to the nation, at all material times the first respondent functioned under the authority of the Central Government. The Tata Memorial Hospital set up by Sir Dorabji Tata Trust was dedicated to the nation and the control thereof was taken over by the Government of India with effect from 1.4.1957 by virtue of the agreement between the two dated 4.2.1957. After the decree was passed by the City Civil Court on 27.3.1957 and the scheme was approved, all the properties of the Hospital came to be vested in the Government of India. The Tata Memorial Centre finds a specific place in the rules of allocation of business framed by the President of India and it is stated to be under the Department of Atomic Energy. In the treatment of the disease of cancer radiation and Isotopes produced by the Bhaba Atomic Research Centre are required to be used and they are made available by the Department of Atomic Energy. Although the society is created to run the administration of the first respondent, under clause 4 of the agreement dated 6.1.1966, the properties of the Tata Memorial Hospital and Research Centre which were vested in the Government by decree dated 22.3.1957 continue to be vested in the Government of India. It is therefore, submitted that the Division Bench was correct in the view taken by it that the first respondent society continued to function as the delegate of the Central Government.

43. The first respondent and the Division Bench emphasized the recital No. 6 of the agreement dated 6.1.1966 and the relevant portion of the Decree and the scheme;

The recital No. 6 reads as follows:- "6. AND WHEREAS the Trustees of the Sir Dorabji Tata Trust being desirous of dedicating this Hospital to the Nation with all its assets including the Cancer Infirmary Fund and the Three plots Nos. 107, 108 and 109 of scheme No. 60, Naigaum Estate, requested the Government of India to take over the control and management of the said Hospital with effect from the First day of April One Thousand Nine Hundred and Fifty Seven and the Manage the same at their own expense as from the said date onwards upon the terms and conditions set forth in the Agreement made on the Fourth Day of February One Thousand Nine Hundred and Fifty Seven (hereinafter called the Hospital Agreement)."

44. The part of the decree emphasized is as follows:- AND THIS COURT DOTH FURTHER ORDER that the properties to be conveyed, transferred and assigned by the Trustees to the Government of India being the immovable properties particularly described in Schedule B hereto and they are hereby vested in the Government of India"

The relevant part of the scheme reads thus:- "The Trustees of Sir Dorabji Tata Trust shall hand over to the Government of India and the Government of India shall take over the control and management of the Tata Memorial Hospital and shall manage the same at their own expenses as and from 1st April 1957."

45. Tests emerging for determining whether the industry is carried on under the authority of the Central Government or the State Government Having seen the statutory framework it is clear that when it comes to an industry governed under the Industrial Disputes Act 1947, to be covered under the MRTU and PULP Act, the State Government has to be the `appropriate government' in relation to any industrial dispute concerning such industry. As provided in Section 2 (3) of the MRTU and PULP Act, we have to fall back on the definitions of `industry' and `appropriate government' under the Industrial Disputes Act 1947. As per the scheme of Section 2 (a) of the Industrial Disputes Act, for the industrial disputes concerning the industries specified in sub-section (i), and for the industries which are carried on by or under the authority of the Central Government, the Central Government is the appropriate government. Section 2 (a) (ii) provides that `in relation to any other industrial dispute' the State Government is the `appropriate government'. Therefore in an industrial disputes concerning industries, other than specified industries it becomes necessary to examine whether the industry is carried on by or under the authority of the Central Government. When it does not fall under either of the two categories, the State Government will be the appropriate government.

46. It is also material to note that this exercise is to be done basically in the context of an industrial dispute to find out as to whether in relation to any industrial dispute concerning that industry, Central Government is the `appropriate government' or the State Government is the `appropriate government'. Oxford dictionary defines word `concerning' as `involving' or `about'. The word `concerning', according to Webster's Dictionary means `relating to', `regarding' or `respecting' proximate, intimate and real connection with the establishment. It is to be noted that the Industrial Dispute Act is an act for investigation and settlement of industrial disputes and the MRTP and PULP Act 1971 is for recognition of trade unions for facilitating collective bargaining for certain undertakings with which we are concerned in the present matter, and for prevention of certain unfair practices amongst other objectives. This being the position it is to be noted that the examination of the issue as to which government is the `appropriate government' is to be carried out in this context.

47. As far as an industry `carried on by the Central Government' is concerned, there need not be much controversy inasmuch as it would mean the industries such as the Railways or Post and Telegraph, which are carried on departmentally by the Central Government itself. The difficulty arises while deciding the industry which is carried on, not by but `under the authority of the Central Government'. Now, as has been noted above, in the Constitution Bench Judgment in Steel Authority of India Limited (supra), the approach of the different Benches in four earlier judgments has been specifically approved and the view expressed in Air India (supra) has been disagreed with. The phrase `under the authority' has been interpreted in Heavy Engineering (Supra), to mean `pursuant

to the authority' such as where an agent or servant acts under authority of his principal or master. That obviously cannot be said of a company incorporated under the Companies Act, as laid down in Heavy Engineering Mazdoor Union case (supra).

However, where a statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State. The Judgment in Heavy Engineering Mazdoor Sangh observed that the inference that a corporation was an agent of the Government might also be drawn where it was performing in substance governmental and non commercial function. The Constitution Bench in Steel Authority case (supra) has disagreed with this view in para 41 of its judgment.

Hence, even a corporation which is carrying on commercial activities can also be an agent of the state in a given situation. Heavy Engineering Judgment is otherwise completely approved wherein, it is made clear that the fact that the members or directors of corporation and he is entitled to call for information, to give directions regarding functioning which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. The fact that entire capital is contributed by the Central Government and wages and salaries are determined by it, was also held to be not relevant.

48. In Hindustan Aeronautics the fact that the industrial dispute had arisen in West Bengal and that the `appropriate government' in the instant case for maintaining industrial peace was West Bengal was held to be relevant for the Governor of West Bengal to refer the dispute for adjudication. In Rashtriya Mill Mazdoor case the fact that the authorized controller was appointed by the Central Government to supervise the undertaking was, held as not making any difference.

The fact that he was to work under the directions of the Central Government was held not to render the industrial undertaking an agent of the Central Government.

49. In Food Corporation of India (supra), inspite of the fact that FCI is a specified industry under Section 2 (i) (a) of the ID Act 1947, this Court considered the definition of `appropriate government' in CLRA Act 1970, and the State Governments were held to be the `appropriate governments' for the regional offices and the warehouses situated in various states wherein the demand for regularization of the services under the CLRA Act had arisen.

50. The propositions in Steel Authority are to be seen on this background viz. that merely because the government companies / corporations and societies are discharging public functions and duties that does not by itself make them agents of the Central or the State Government. The industry or undertaking has to be carried under the authority of the Central Government or the State Government. That authority may be conferred either by a statute or by virtue of a relationship of

principle and agent, or delegation of power. When it comes to conferring power by statute, there is not much difficulty. However, where it is not so, and whether the undertaking is functioning under authority it is a question of fact. It is to be decided on the facts and circumstances of each case.

51. Application of these tests to the facts of the present case.

As far as the facts of the present case are concerned, as can be seen from the submissions of the parties, the determination of the question as to which Government is the appropriate Government for the first respondent - establishment, will depend upon two issues - (1) How is the property of the first respondent vested? and (2) Whether the control and management of the Hospital and the Research Centre is independently with the first respondent?

52. How is the property of the first respondent vested.

As can be seen from the facts, which have come on record, the Tata Memorial Hospital was set up by Sir Dorabji Tata Trust. It was being maintained out of the funds of the Trust itself as well as from the grants made over by the Central Government as well as by the State Government. The Indian Cancer Research Centre was set up by the joint collaboration of Sir Dorabji Tata Trust and the Central Government by an agreement dated 07.10.1953. The initial grant for the Center was given by the Central Government and it was meeting the expenses of the Centre though it was set up on the land belonging to the Trust. In 1957 Sir Dorabji Tata Trust decided to dedicate to the nation the property on which the Tata Memorial Centre stands. An agreement was entered in that year between the trustees and the Central Government. The control and the management of the hospital was transferred to the Central Government and a vesting order was passed in the same year to that effect by the City Civil Court in appropriate proceedings. In the year 1966, the Central Government and the Dorabji Tata Trust entered into an agreement by virtue of which Tata Memorial Hospital and the Indian Cancer Research Centre were amalgamated and the first respondent society was created and the administration and the management of the Centre was vested in the Governing Council of the said Society. The first respondent - Centre was registered as a Society under the Societies Registration Act, 1860 as well as under the Bombay Public Trust Act, 1950.

53. The first respondent heavily relied upon the test of vesting of the property as the main criterion for ascertaining as to who controls the first respondent for the purpose of deciding as to which Government is the Appropriate Government. It was emphasized that under the agreement of 1957, the Dorabji Tata Trust handed over the property to the Central Government and that vesting had been continued in the agreement of 1966 also. It is, however, to be noted that as per this very agreement, the future acquisitions were to vest in the Governing Council of the Society. Rule - 26 of the Rules and Regulations of the first respondent - Society provides that all properties and funds of the Centre (except the immovable properties as specified) vest in the council:

"26. Properties and Funds vested in the Council: Except the existing immovable properties of the Centre and such immovable properties as may be vested in the Holding Trustees, all the other properties of the Centre shall vest in the Council and more particularly the following:

(a) recurring and non-recurring grants made by Government;

(b) other grants, donations and gifts (periodical or otherwise), other than those intended to form the corpus of the property and funds of the Centre or held for the benefit of the Centre by the Holding Trustees.;

(c) the income derived from the immovable properties and the income of the funds vested in the Holding Trustees and income of the funds vested in the Council and also fees, subscription and other annual receipts; and (d) all plant and machinery, equipment and instruments (whether medical, surgical, laboratory, workshop or of any other kind), books and journals, furniture, furnishings and fixtures belonging to the Centre."

54. However, even when it comes to the immovable properties, Section - 5 of the Societies Registration Act provides for deemed vesting of the properties belonging to a society into the Governing Body of such society. Section - 5 of the Societies Registration Act reads as follows:

"5.Property of society how vested - The property, movable or immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title."

55. In this behalf, we must keep in mind, the raison d'etre of the above referred to Section - 5 that once a trust is established and a society is registered for the administration of the trust, the statute contemplates that the society should be fully autonomous and that the lack of actual transfer of property of the trust should not prevent the governing body in its administration. Law recognizes that it would be proper to regard that as done which ought to have been done. The deeming provision creates a fictional vesting in favour of the Governing Council and not in favour of the Society or the Trust. This is also for the reason that society is not a body corporate which has also been held by this Court in the Board of Trustees, Another [AIR 1962 SC 458] and reiterated in Illachi Devi (D) by L.Rs. and SC 3397]. Since the society cannot hold the property in its name, vesting of the property in the trustees is likely to hinder the administration of the trust property, particularly, where the trustees themselves or their legal representatives claim adversely to the trust.

It is for this reason that the law vests the property belonging to the society in its Governing Body.

56. The phrase `property belonging to a person' has two general meanings (1) ownership, (2) the absolute right of user (per Martin B in Att. Gen. vs. Oxford & C. Railway Co. 31 L.J. (1862) 218 at 227) `Belonging' connotes either ownership or absolute right of user (Wills J in The Governors of St. Thomas', St. Bartholomew's, and Bridewell Hospital vs. Hudgell (1901) 1 KB 381. The Centre has an absolute right of user over its immovable properties which it has been exclusively exercising all throughout. Section 5 of the Societies Registration Act clearly declares that the property belonging to the society, meaning under its user, if not vested in the trustees shall be deemed to be vested in the Governing Council of the society. In the present case, it is nobody's case that the property remains vested in the Trustees of the Dorabji Tata Trust. It has been canvassed on behalf of the first respondent that the property is vested in the Central Government.

However, the Central Government has never claimed any title to the property adverse to the first respondent - Tata Memorial Centre. It is true that the property dedicated to the Tata Memorial Centre has not been transferred to the Society by the Central Government. But the fact is that it is the Governing Council of the first respondent which has been administering and controlling the day to day affairs of Tata Memorial Centre and its property funds, employment of its staff and their conditions of service. Hence, in view of the above referred to factual as well as legal scenario the first issue will have to be decided that the property dedicated to the first respondent will be deemed to be vested in the Governing Council of the first respondent - Society.

57. Whether the Control and Management of the Hospital and the Research Centre is independently with the first respondent.

As far as the control and management are concerned, it is clear from the facts referred to above that the Central Government has the power to appoint four nominees on the Governing Council of the first respondent. We have already seen, as held in Heavy Engineering Mazdoor Union Case (Supra), mere power to appoint the Directors does not warrant a conclusion that the particular undertaking is a Central Government Undertaking. The question is whether the undertaking is functioning as the agent of the Central Government. In the instant case, the society was created to entrust the control and management of the Hospital and the Research Centre to the Society. Recital No.9 of the agreement of the 1966 specifically states as follows:

"9) AND WHEREAS the Government of India and the Trustees of the Sir Dorabji Tata Trust are now desirous of amalgamating the two institutions and entrusting their control and management to a society."

58. Consequently, Rule - 3 of the Society, which has been referred to earlier, also lays down that the administration and the management vests in the Governing Council. It is also to be noted that as per Rules and Regulation Nos.3 and 4 which have been quoted earlier, the administration and management of the Centre is vested in the Council which is declared to be an executive body of the center. As per the foreword to the bye-laws of the Tata Memorial Centre - "the final decision on the extent of applicability of these rules to all Tata Memorial Centre employees rests with the Tata Memorial Governing Council. Its decision on the interpretation of these rules adopted for Tata Memorial Centre employees will be final".

Thus, as per the Rules and Regulations, the entire administration and management of Tata Memorial Centre is with the Governing Council.

59. It has clearly come in the evidence of Mr.Muthusamy, the Chief Administrative Officer of the first respondent that there was no interference of the Central Government in the day to day activities of the first respondent. The decisions were taken by the directors of the first respondent itself. As can be seen from the bye-laws of the first respondent, the appointments and the service conditions were modelled on the pattern of Department of Atomic Energy, but the pay, allowances and pension, etc. are on the pattern of the Mumbai Municipal Corporation, and which are fixed by the decisions of the Governing Council of the first respondent. The material and the evidence as referred to above clearly show that the entrustment of the management and control of the Hospital and the Research Centre to the Society was complete and it has been so functioning thereafter.

60. Besides, as observed in Heavy Engineering Mazdoor Union Case (supra), if we look to the definition of `employer' under the Industrial Disputes Act, in a case where an industry is carried on by or under the authority of the Government, the employer is defined as the authority prescribed in this behalf or Head of the Department. In the instant case, no such authority has been prescribed, nor any head of the department notified by the Central Government. On the contrary, right from the time the society was created, its administration and management is completely under its Governing Council and it is functioning independently. No contrary evidence has been produced. The evidence of Mr. Muthusamy, the Chief Administrative Officer of the Tata Memorial Centre establishes the independent functioning of the first respondent under its Governing Council. It is the Governing Council which has been exercising the executive powers of the employer.

61. It was then submitted that mentioning of the Tata Memorial Centre in the Rules for Allocation of Business of Government of India is a pointer to the control of the Central Government. Insofar as the Rules of business of the Government of India are concerned, they are for the purpose of allocation of business between various departments of Government of India whenever the Government of India has to take a decision. As rightly held by a Division Bench of Verma reported in 1997 (75) Indian Factories and Labour Reports Page -4 mere allocation of business under any department would not in any manner decide the issue as raised in the present case as to whether a particular industry is under the control of the Central Government. The business rules cannot be

conclusive to show that any institution or organization listed under the allocation of business, would be part of any department of the Government of India. Besides, as noted in Heavy Engineering Mazdoor Union (supra) even if a Minister appoints the directors, gives directions, calls information or supervises business, that will not make the industry an agent of the Government.

62. Hence we have to conclude that even on the test of control and management of the Hospital and the Centre, they are functioning independently under the 1st respondent Society. They cannot be said to be `under the control', of the Central Government. In the circumstances the State Government shall have to be held as the appropriate government for the 1st respondent for the purpose of I.D. Act consequently the MRTU & PULP Act.

63. It is material to note that until the present litigation, neither the Central Government nor the Dorabji Tata Trust or even the Governing Council of the first respondent ever disputed the application of the MRTU and PULP Act to the first respondent establishment. Prior to the Applications leading to the present appeal, the respondent - 1 has also filed Complaints under the MRTU and PULP Act. Neither the appellant nor the second respondent - rival union ever disputed the application of the Act. In fact, the first respondent has in a way, by its own conduct acquiesced into the application of the Act, and the appellant - Union has been recognized under the Act right from 1985.

64. In view of all these factors, it is not possible for us to sustain the judgment of the Division Bench of the Bombay High Court. The Division Bench has clearly erred in its consideration of the judgment in the Steel Authority of India Case. The first respondent cannot be held to be functioning under the authority of the Central Government. The State Government is therefore the appropriate Government for the respondent No. 1 for the purposes of ID Act and MRTU and PULP Act. The two Applications filed by respondent No. 2 will have to be held as maintainable under MRTU and PULP Act. The order of the Industrial Court holding them to be maintainable but dismissing them on merits is held to be correct. In the circumstances, the appeal is allowed. The order passed by the Division Bench of the Bombay High Court is set aside and the order passed by the Industrial Court as confirmed by the learned Single Judge, is restored. The Appeal No. 133/2002 filed by the 1st Respondent in the High Court shall stand dismissed.

66. Parties will bear their own costs.