

## **Oil And Natural Gas Commission vs Collector Of Central Excise on 7 January, 1994**

**Equivalent citations: 1994(70)ELT45(SC), (2004)6SCC437, AIRONLINE 1994 SC 419, AIRONLINE 1994 SC 690**

**Bench: M.N. Venkatachaliah, S. Mohan**

### **ORDER**

1. The order of this Court dated 11th October, 1991 in Civil Appeal Nos. 2058-59 of 1988 in the matter of the setting-up and functioning of the High Power Committee for resolving disputes between Union of India on the one hand and its Public Sector Undertakings on the other, requires some clarifications so that some mis-conceptions arising out of the memo of the Cabinet Secretariat referred to in the course of the said order, are removed.

2. The relevant portion of the memo referred to in the course of this Court's order dated 11th October, 1991 reads :

It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to Public Undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated.

(emphasis supplied)

3. The purpose of setting up this High Power Committee was to ensure that as far as possible, the controversies between a Ministry and a Ministry of the Government of India, a Ministry and a Public Sector Undertaking of the Government of India and between Public Sector Undertakings themselves are resolved by recourse to the High Power Committee and that time consuming and expensive litigation is avoided.

4. There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some crease ironed out. Some doubts persist as to the precise import and implications of the words and recourse to litigation should be avoided". It is clear that order of this court is not to effect that -- nor can that be done---so far as Union of India and its statutory corporations are concerned, the statutory remedies are effaced. In deed, the purpose of the Constitution of the High Power Committee was not to take away those remedies. The relevant portion of the order reads.

We direct that the Government of India shall set up a Committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India; Ministry and Public Sector Undertaking of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may included a representative of the Ministry concerned in a specific case and one from the Ministry of finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

(emphasis supplied) It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house Committee.

It is also clarified that even the pending matters before any court or Tribunal should also be the subject matter of the deliberations of the High Power Committee. All the matters pending as on today either instituted by the Union of India or any of the Public Sector Undertakings shall within one month from today be referred by the appellant or the petitioner, as the case may be, to the High Power Committee. The High Power Committee will deal with these matters most expeditiously and endeavour to resolve the matters.

5. Accordingly, there, should be no bar to the lodgment of an appeal or petition either by the Union of India or the Public Sector Undertakings before any court or tribunal so as to save limitation. But, before such filing every endeavor should be made to have the clearance of the High Power Committee.

However, as to what the court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11th October 1991 clarifies :

It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

6. Wherever appeals, petitions etc. are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the petitioner as the case may be, shall within a month from such filing, refer the matter to the High Power Committee with prior notice to the Designated Authority in Cabinet Secretariat of Government of India authorised to receive notices in that behalf. Sri. K.T.S. Tulsi, learned Additional Solicitor General, stated that in order to coordinate these references of the High Power Committee the Government proposes to nominate the Under Secretary (Coordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance Department of

Revenue, and in the case of Public Sector Undertakings by its Chairman, Managing Director or chief Executive, as the case may be. It is only after such reference to the High Power Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it. It shall grant clearance for the litigation.

7. The High Power Committee shall submit a half yearly report---instead of quarterly report as earlier indicated---to this Court as to the number of matters referred to it and the manner in which they were dealt with and disposed of. The report for the half-year ended 31st December, 1993 shall be lodged before 31st January, 1994 and for every half year thereafter within one month of the expiry of the half year.

I.A. Nos. 3 & 4 stand disposed of.

This order will be read as part of and supplementary to the order dated 11th October, 1991.