Goa Sampling Employees' Association vs General Superintendance Co. Of India ... on 11 December, 1984

Equivalent citations: 1985 AIR 357, 1985 SCR (2) 373, AIR 1985 SUPREME COURT 357, 1985 (1) SCC 206, 1985 LAB. I. C. 666, 1985 UJ (SC) 553, 1985 UJ (SC) 394, 1985 SCC (L&S) 201, (1985) 66 FJR 114, (1985) 50 FACLR 458, (1985) 1 LAB LN 237, (1985) MAH LJ 646, (1985) 1 SERVLJ 309, 1985 BOM LR 87 151

Author: D.A. Desai

Bench: D.A. Desai, Amarendra Nath Sen

PETITIONER:
GOA SAMPLING EMPLOYEES' ASSOCIATION

Vs.

RESPONDENT:
GENERAL SUPERINTENDANCE CO. OF INDIA PVT. LTD. AND ORS.

DATE OF JUDGMENT11/12/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SEN, AMARENDRA NATH (J)

CITATION:
1985 AIR 357 1985 SCR (2) 373
1985 SCC (1) 206 1984 SCALE (2)978

ACT:
Industrial Disputes Act 1947, Sections 2 (a) (i) and 10 (1) (d).
Industrial dispute in a Union Territory-Central Government whether 'appropriate Government' to refer dispute to the Industrial Tribunal.
Constitution of India 1950, Article 239.
'Administration of Union Territory'-Administrator-Central Government whether 'appropriate Government' to refer industrial dispute in a Union Territory to the industrial Tribunal under the Industrial Disputes Act 1947.
General Clauses Act 1897 Sections 3 (8), 3 (60), 3,(62A).
'Central Government'-'State Government'-Union

Territory'-'Administration of Union Territory'-'Distinction between.

Word & Phrases-Meaning of:

'appropriate Government'-Section 2 (a) (i) Industrial Dispute Act 1947

in relation to the administration of Union` Territory'-Section 3 (8) (b) (iii) and 3 (60) (c) General Clauses Act. 1897.

HEADNOTE:

The Central Government as an 'appropriate Government' referred the Industrial dispute between the Appellant-employees' Association and the first Respondent-employer in each of the Appeals under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947 to the Central Government Industrial Tribunal.

A preliminary objection was raised that the CENTRAL Government was not the 'appropriate Government' in relation to the said industrial disputes and consequently the Central Government had no power under Sec. 10 (l) (d) of the Act to make the five references and that the Tribunal would have no jurisdiction to entertain the same- The Appellant-Association repelled this objection by contending that the workmen were 'dock workers' within the meaning of the expression in the Dock Workers (Regulation of Employment) Act. 1948 and as they were working at Mormugao Port, a major port in the Union Territory of Goa, Daman Diu, the Central Government would be the 'appropriate Government' in relation to the industrial dispute and consequently the references were valid and competent.

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The Tribunal held that the workmen covered by the reference who were iron-Ore samplers were 'dock workers' as defined in the Dock Workers (Regulation of Employment) Act, 1948 and as they were working in a major port, in a Union Territory, the Central Government would be the 'appropriate Government' for referring the industrial dispute. The Tribunal over-ruled the preliminary objection and set down the references for final hearing.

The first respondent-employers filed applications under Article 227 in the High Court which held that the workmen, who were iron ore samplers, were neither comprehended in the expression 'dock workers' as defined in the Dock Workers (Regulation of Employment) Act, 1948. nor involved in any work connected with or related to a major port. and were not involved in an industrial dispute concerning a major port and therefore the Central Government was not the appropriate Government' for referring the industrial dispute. It further held that the Central Government is not the State Government for the Union Territory of Goa, Daman and Diu under Section 2 (a) (i) of

the Industrial Disputes Act, 1947 but it is the Administrator appointed under Article 239 and therefore the Central Government was not the 'appropriate Government' and had no jurisdiction to make the references. The rule was made absolute and the references quashed.

Allowing the Appeals to this Court,

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HELD: 1. The Central,Government as the 'appropriate Government had made the references The High Court was clearly in error in quashing the references. The judgment of the High Court is quashed and set aside and the award of the Tribunal on the preliminary point about the competence of the Central Government to make the reference under Section 10(1) of Industrial Disputes, Act 1947 is confirmed. The tribunal will be at liberty to examine the contention whether iron ore samples are involved in any work connected with or related to a major part or are dock workers and come to its own decision uninfluenced by the view taken by the High Court. As the dispute is an old one, the Tribunal is to give top priority and dispose of the matter within a period of six months. [386G; 387D-E, C]

2 (i) Indisputable the Industrial Disputes Act, 1947 is a Central Act enacted after the commencement of the General Clauses Act, 1897 and the relevant definitions having been recast to meet the constitutional and statutory requirements the expressions 'Central Government, 'State Government',and 'Union Territory' must receive the meaning assigned to each in the General Clauses Act, 1897 unless there is anything repugnant in the subject or context in which it is used. No. such repugnancy was brought to the notice of the Court. [384B-C]

(ii) On a conspectus of the relevant provisions of the Constitution and the Union Territories Act 1963, it clearly transpires that the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an Administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that

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Of a Governor of a State. Administrator can differ with his Minister and he must then obtain the orders of the President meaning thereby of the Central A Government. The Administrator of Union Territory does not therefore qualify for the description of a State Government. The Central Government is therefore the 'appropriate Government' [384F-G]

(iii) The High Court fell into an error in interpreting clause (c) of Section 3 (60) of the General Clauses Act 1897 which upon its true construction would show that in the Union Territory there is no concept of State Government but wherever the expression 'State Government' is

used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition. [383D-H]

Satya Dev Bushahri v. Padam Dev & Ors., [1955] SCR 549 and the State of Madhya Pradesh v, Shri Moula Bux & Ors. [1962] 2 SCR 794, held inapplicable.

3. (i) The definition of three expression 'Central Government' (Section 3 (8), 'State Government' (Section 3 (60)), and Union Territory' (Section 3 (62A)) in the General Clauses Act, 1897 Would unmistakably show that the framers of the Constitution as also the Parliament in enacting these definitions have clearly retained the distinction between State Government and Administration of Union Territory as provided by the Constitution. It is especially made clear in the definition of expression 'Central Government' that in relation to the Administration of a Union Territory the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution. would be comprehended in the expression 'Central Government. When this inclusionary part is put in juxtaposition with exclusionary part in the definition of the expression State Government' which provides that as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, it shall mean, in a State, the Governors and in a Union Territory, the Central Government, the difference conceptually speaking between the expression' State Government' and the 'Administration of a Union Territory' clearly emerges There is no room for doubt that the expression Administration of a Union Territory', Administrator however having been described, would not be comprehended in the expression State Government as used in any enactment These definitions have been modified to bring them to their present form at by the Adaptation of Laws (No.1) Order, 1956. [386E-G]

(ii) The High Court clearly fell into an error when it observed that the inclusive definition of the expression 'State Government, does not necessarily enlarge the scope of the expression but may occasionally point to the contrary; [386C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4904- 4908 of 1984.

From the Judgment and Order dated 19.9.83 of the Bombay High Court in Special Civil Application Nos. 97B/80, 98B/80, 100B/80, 99B/80 and 67B/80.

VA Bobde, K.J. John and Ms. N. Srivastava for the appellant.

F.S. Nariman, Miss A. Subhashini M.S. Usgaocar, S.K. Mehta, P.N. Puri and M.K. Dua for the respondents.

The Judgment of the Court was delivered by DESAI, J. Special leave granted.

Again the rigmarole of an utterly unsustainable preliminary objection, and valuable time of a decade is wasted in this bizarre exercise frustrating the search for socio-economic justice, making it a distant dream, if not an optical illusion.

The Central Government as an appropriate Government referred the Industrial dispute between the appellant-Goa Sampling Employees' Association ('Association' for short) and the first respondent ('employer' for short) in each petition under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947 ('Act' for short) to the Central Government Industrial Tribunal No. 2, Bombay by different orders made in the year 1974 and 1975. Five separate references were made because even though the Association representing employees is common in all references, employer is different but each raising a common question. When the references came up before the Tribunal for hearing, it appears that the employer in each case raised a preliminary objection but what was the earliest preliminary objection eluded us. The Tribunal overruled the preliminary objection whereupon the employer filed some appeal to an authority which is not made clear in the record. It appears the matters were remitted to the Tribunal and thereafter all the five references stood transferred to the Central Government Industrial Tribunal No. 1 ('Tribunal' for short).

When the references again came up before the Tribunal for hearing, the history repeated. A preliminary objection was raised that the Central Government was not the appropriate Government in relation to the industrial dispute between the Association and the employer and therefore, the Central Government had no power under Sec. 10 (1) (d) of the Act to make the reference and accordingly the Tribunal will have no jurisdiction to entertain A the same. The Association attempted to repell this contention by urging that the workmen were dock workers within the meaning of the expression in Dock Workers (Regulation of Employment) Act, 1948 and as they are working in a major port, the Central Government will be the appropriate Government in relation to the industrial dispute between the Association and the workmen and therefore, the reference is valid and the Tribunal should deal with the same on merits according to law. As a second string to the bow, it was contended that in relation to a union territory Central Government is the appropriate Government.

It appears that evidence was led before the Tribunal by both the sides. The Tribunal after exhaustively examining the evidence held that the workmen covered by the reference would be comprehended in the definition of expression 'Dock Workers' as defined in the Dock Workers (Regulation of Employment) Act and as they were working at Mormugao Port which is a major port, in respect of the industrial dispute raised by them the Central Government would be the appropriate Government. The Tribunal then proceeded to examine whether the reference would be competent on the assumption that the employees are not covered by the expression 'Dock Workers' and held that the work performed by the employees is in a major port and the dispute arise out of the duty performed and work rendered in the major port and therefore, the Central Government would be

the appropriate Government to make the necessary reference. The Tribunal then proceeded to consider the alternative submission whether the reference would be competent even if the State Government is the appropriate Government in view of the fact that Goa, Damen and Diu constitute Union Territory as set out in the First Schedule to the Constitution and its administration is carried on by the Administrator appointed by the President under Art. 239 of the Constitution. Therefore, also the Central Government is the appropriate Government. After discussing the rival contentions the Tribunal did not record a finding on this contention. The Tribunal overruled the preliminary objection and set down the reference for final hearing by its order dated July 14, 1980.

The employer in each reference filed special civil application under Art. 227 of the Constitution in the High Court of Judica-

ture at Bombay. All the five special civil applications came up before the Panaji Bench of the Bombay High Court for final hearing and they were disposed of by a common judgment The High Court held that the iron ore samplers, the workmen represented by the appellant association are not involved in any work connected with or related to a major port. The High Court further held that the industrial dispute in which iron ore samplers are involved is not an industrial dispute concerning the major port within the meaning of Sec- 2 (a)

(i) of the Industrial Disputes Act. 1947 nor are the workmen comprehended in the expression 'Dock Workers' as defined in the Dock Workers (Regulation of Employment) Act, 1948 and therefore the Central Government is not the appropriate Government for referring the industrial dispute to the Tribunal. Dealing with the second limb of the submission that the Central Government itself can be said to be the State Government for the Union Territory of Goa, Daman and Diu, the High Court held that the Central Government is not the State Government for the Union Territory of Goa, Daman and Diu under Sec 2 (a) (ii) of the Act but it is the administrator appointed under Art, 239 of the Constitution of India who is the State Government for the Union Territory of Goa Daman and Diu and he is the appropriate Government within the meaning of Sec. 2 (a) of the Act. The High Court felt that if the Central Government is also held to be the State Government for this purpose there would be two State Governments for the Union Territory of Goa, Daman and Diu and this would lead to utter confusion: The High Court accordingly concluded that the Administrator is the appropriate Government for the purpose of Sec 2(a) of the Act and therefore the Central Government was not the appropriate Government and had no jurisdiction to make the impugned references. In accordance with this finding, the High Court made the rule absolute quashing the references. Hence these appeals by special leave.

The question that must engage our attention is whether in relation to the industrial dispute between the employees represented by the Association and the employer which is the appropriate Government which can exercise power under Sec. 10 of the Act. Sec. 10 provides that 'where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute etc. to a Tribunal for adjudication.' There are two A provisos to the section. which are not material for the present purpose. Thus the power is conferred on the appropriate Government to make the reference for adjudication of an industrial dispute which either exists or is apprehended.

'Appropriate Government' is defined in Sec. 2 (a) of the Act to mean C(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government (omitting the words not relevant for the present purpose), a major port. The (central Government, and (ii) in relation to any other industrial dispute, the State Government.' The employer contended that the employees represented by the Association in each case are iron ore samplers and they are not connected with the work of a major port or their duties are not ancillary or incidental to the working of a major port and therefore, Sec. 2 (a) (i) would not be attracted. As a corroleory, it was submitted that the case would fall in the residuary clause (ii) and therefore, the State Government would be the appropriate Government. The employees repelled the contention by saying that they are employees working in a major port and the industrial dispute directly touches the functioning and administration of a major port and therefore, the Central Government is the appropriate Government. Alternatively it was contended on behalf of the Association/appellant herein that any rate in relation to a Union Territory, there is no State Government and the Central Government, if it at all can be said to be one, is the only Government and in the absence of a State Government the Central Government will also have all the powers of the State Government and therefore, the Central Government would be the appropriate Government for the purpose of making the reference. It is the second limb which we propose to examine in these appeals because in our opinion it goes to the root of the matter and the appeals can be finally disposed of by answering this contention.

Before we deal with the contention on merits, it is necessary to focus attention on constitutional and statutory provisions relevant to the contention.

Art. 239 (1) provides that 'save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit through an Administrator to be appointed by him with such designation as he may specify.' Art. 239A which was inserted by the Constitution (Fourteenth Amendment) Act. 1962 confers power Parliament by law to create local legislatures or Council of Ministers or both for certain Union Territories including Goa, Damen and Diu. The law by which the local legislature and/or Council of Ministers are created will also specify their constitution, powers and functions in each case. By sub-art.(2) it was ensured that such law when enacted shall not be deemed to be an amendment of the Constitution for the purpose of Art. 368. Art. 240 confers power on the President to make regulations for the peace, progress and good government of the Union Territories specified therein. Art. 246 (4) provides that 'Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.' The expression 'Central Government' has been defined in Sec. 3 (8) of the General Clauses Act, 1897 (omitting the words not relevant for the present purpose) as under:

> "(8) "Central Government" shall-
>
> (a) .- ..... - .. ; ...
>
> .....

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President, and shall include,

(i)

(ii)

(iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution."

The expression 'State Government' is defined in Sec. 3 (60) (omitting the words not necessary for the present purpose,) as under:

"(60) "State Government",

(a) ....

(b) .....

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government ;"

The expression 'Union Territory' is defined in Sec. 3 (62A) to mean "Union Territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule."

Parliament enacted the Government of Union Territories Act, 1963 ('1963 Act' for short). Its long title reveals the object underlying the enactment, namely to provide for Legislative Assemblies and Council of Ministers for certain Union Territories and for certain other matters. Union Territory of Goa, Daman and Diu is governed by the 1963 Act (See Sec. 2 h). The expression 'Administrator' has been defined in Sec. 2 (a) of the 1963 Act to mean 'the Administrator of a Union Territory appointed by the President under Art. 239.' Sec. 18 specifies the extent of legislative power of the Legislative Assembly of a Union Territory to encompass any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule. Sec. 44 provides that there shall be a Council of Ministers in each Union territory with the Chief Minister at the head to aid and advise the Administrator in exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws except in so far as he is required by or under the Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions. There is a proviso to Sec 44 (1) which sheds light on the position of the Administrator and powers of the Council of Ministers. According to the proviso in the event of a difference of opinion between the Administrator and the Ministers of any matter, the Administrator shall refer it to the President for decision given therein by the President etc. Thus the executive power of the Administrator extends

to all subjects covered by the legislative power. But in the event of a difference of opinion the President decides the point. When President decides the point, it is the Central Government that decides the point. And that is binding on the Administrator and also the Ministers. Section 45 provides that 'the Chief Minister of a Union Territory shall be appointed by the President.' Section 46 confers power on the President to make rules for the conduct of business. Section 55 provides that 'all contracts in connection with the administration of a Union Territory are contracts made in the exercise of the executive power of the Union and all suits and proceedings in connection with the administration of a Union Territory shall be instituted by or against the Government of India.' In exercise of the power conferred by Article 240, the President has infer alia enacted the Goa, Daman and Diu (Laws) Regulation, 1962. By clause (3) of the regulation, the Acts enumerated in the Schedule appended to the Act were extended to the Goa, Daman and Diu subject to the modifications, if any, specified in the Schedule. The Schedule includes Industrial Disputes Act, 1947 as a whole without any modification.

Section 10 (l) of the Act confers power on the appropriate Government to refer an industrial dispute for adjudication to one or the other of the various authorities enumerated in the section. Thus the power is the power of the appropriate Government to make the reference. The cotention which found favour with the High Court is that in relations to the industrial dispute raised by the workmen represented by the Association by broadly described as iron ore samplers. the appropriate Government is the State Government and not the Central Government and that as the reference in this case is made by the Central Government, the same being without jurisdiction, the Industrial Tribunal did not acquire any jurisdiction to adjudicate upon the same.

Would it be constitutionally correct to describe Administration of a Union Territory as State Government ? Article 1 provides that 'India, that is Bharat, shall be a Union of States'. Sub-article (2) provides that 'the States and the territories thereof shall be as specified in the First Schedule'- Sub-article (3) introduced a dichotomy between the State as understood in the Constitution and the Union Territory when it provides that 'the territory of India shall comprise-(a) the territories of the States, and

(b) the Union Territories specified in the First Schedule. The provisions of Part VI of the Constitution do not apply to the Union Territories. Part VI of the Constitution which deals with States clearly indicates that A the Union Territory is not a State. Therefore, the Union Territory constitutionally speaking is something other than a State. As far as the States are concerned, there has to be a Governor for each State though it would be permissible to appoint the same person as Governor of two or more States. Part VIII provides for administration of Union Territories. Article 239 conferred power on the president for administration of Union Territories unless otherwise provided by an act of Parliament. Therefore, apart from the definitions of the expressions 'Central Government', 'State Government' and 'Union Territory' as enacted in the General Clauses Act, 1897, the Constitution itself makes a distinction between State and its Government called the State Government and Union Territory and the Administration of the Union Territory. Unless otherwise clearly enacted, the expression 'State will not comprehend Union Territory' and the 'State Government' would not comprehend Administration of Union Territory. Now if we recall the definition of three expressions 'Central Government' (Section 3 (8), 'State Government' (Section 3

(60)) and Union Territory' (Section 3 (62A)) in the General Clauses Act, it would unmistakably show that the framers of the Constitution as also the Parliament in enacting these definitions have clearly retained the distinction between State Government and Administration of Union Territory as provided by the Constitution. It is especially made clear in the definition of expression 'Central Government' that in relation to the Administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution, would be comprehended in the expression 'Central Government'. When this inclusionary part is put in juxta-position with exclusionary part in the definition of the expression 'State Government' which provides that as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, it shall mean, in a State, the Governor, and in a Union Territory, the Central Government, the difference conceptually speaking between the expression 'State Government' and the 'Administration of a Union Territory' clearly emerges. Therefore, there is no room for doubt that the expression 'Administration of a Union Territory', Administrator howsoever having been described, would not be comprehended in the expression state Government' as used in any enactment. These definitions have been modified to being them to their present format by adaptation of laws (No. 1) Order 1956. Section 3 of the General Clauses Act, 1897 provides that in all General Acts and Regulations made after the commencement of the Act unless there is anything repugnant in the subject or context, the words defined therein will have the meaning assigned therein. lndisputably the lndustrial Disputes Act, 1947 is' a Central Act enacted after the commencement of the General Clauses Act and the relevant definitions having been recast to meet the constitutional and statutory requirements, the expressions 'Central Government, 'Stale Government' and 'Union Territory' must receive the meaning assigned to each in the General Clauses Act unless there is anything repugnant in the subject or context in which it is used. No such repugnancy was brought to our notice. Therefore, these expressions must receive the meaning assigned to them.

The High Court after referring to the definitions of the aforementioned three expressions as set out and discussed herein first observed that on a careful reading of the definition, it appears 'that in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution is the Central Government.' So far there is no dispute. The High Court then observed that it must follow that the Administrator is the State Government in so far as the Union Territory is concerned, and it is so provided in the definition of the State Government in Section 3(60) of the General Clauses Act.' The High Court fell into an error in interpreting clause (c) of Section 3 (60) which upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever the expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition. Our attention was, however, drawn to the two decisions of this Court in Satya Dev Bushahri v. Padam Dev & Ors.(') and the decision of this Court in The State of Madhya Pradesh v. Shri Moula Bux & Ors.(2) in which with reference to Part States, some observations have been made that the authority conferred under Article 239, as it then stood, to administer Part States has (1) [1955] S.C.R. 549.

(2) [1962] 2 S.C.R. 794.

not effect of converting those States into the Central Government, and that under Article 239 the President occupies in regard to Part States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part in States.' It was also observed that 'though the Part States are centrally administered under the provisions of Article 239, they do not cease to be States and become merged with the Central Government.' It was then urged that by the amendment to Articles 239 and 240 by the Constitution (Seventh Amendment) Act, 1956 and introduction of Article 239 A and 239 by the Constitution (Fourteenth Amendment) Act, 1962, only the nomenclature of the Part States has undergone a change, now being described as Union Territory, but the position the Union Territory is the same as it was as Part States and therefore, the view taken in the aforementioned decisions that the administration of Part States could appropriately be described as State Government would mutatis mutandis apply to the administration of Union Territories. In other words, it was said that they can be appropriately described as State Governments for various purposes. Both the decisions were rendered prior to the amendment of Part VIII of the Constitution in 1956 and the insertion of the Articles 239 A and 239 in 1962 and more specifically after the enactment of the 1963 Act. The concept of Union Territory with or without a Legislative Assembly and with or without a Council of Ministers with specified legislative and executive powers have been set out in the 1963 Act. Coupled with this, modifications were made in the definitions of aforementioned three expressions. Therefore, the two decisions are of no assistance in resolutation of the present controversy.

It was then pointed out that the definition of the expression 'appropriate Government' in Section 2(a)(i) of the Act unless it is shown in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or the enumerated industries or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, the appropriate Government will be the Central Government and in any other case a State Government- It was therefore, submitted that unless it is shown that in relation to the industrial dispute raised by the Association, the appropriate Government would be the Central Government, the case would fall under the residuary provision, namely, that in relation to any other industrial dispute, the appro-

priate Government would be the State Government. The submission does not commend to us because before one can say that the appropriate Government is the State Government in relation to an industrial dispute, there has to be some State Government in which power must be located for making the reference. If there is no State Government but there is some other Government called the Administration of Union Territory, the question would arise whether in such a situation the Administration of Union Territory should be described as State Government for the purpose of Section 2(a)(i) read with Section 10(1) ?

The High Court clearly fell into an error when it observed that the inclusive definition of the expression 'State Government' does not necessarily enlarge the scope of the expression, but may occasionally point to the contrary. Let as assume it to be so without deciding it. But where the High Court fell into the error was when it held that the President representing the Central Government and the Administrator, and appointee of the President and subject to all orders of the President constitute two different governments for a Union Territory. The position, the power, the duties and functions of the Administrator in relation to the President have been overlooked. On a conspectus of

the relevant provisions of the Constitution and the 1963 Act, it clearly transpires that the concept of State Government is foreign to the Administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that of a Governor of a State. Administrator can differ with his Minister and he must then obtain the orders of the President meaning thereby of the Central Government. Therefore, at any rate the administrator of Union Territory does not qualify for the description of a State Government, Therefore, the Central Government is the 'appropriate Government'.

If the Central Government as the appropriate Government has made the reference, the High Court was clearly in error in quashing the reference. Learned counsel for the appellant-Association made an alter native submission that the workmen involved in the dispute are workmen working in a major port and are dock workers and there fore, also the Central Government will be the appropriate Government for the purpose of making reference under Sec. 10(1). This contention found favour with the Tribunal. The High Court reached a contrary conclusion observing that the iron ore samplers are not involved in any work connected with or related to a major port nor are they dock workers. We do not propose to examine this alternative submission because if the reference is held to be competent, it is not necessary to undertake elaborate examination of the second contention to sustain the reference. It is, however, urged that this aspect is likely to figure again before the Tribunal while examining the industrial dispute referred to it for adjudication on merits. In this situation the proper thing is to keep the contention between the parties open. The Tribunal will be at liberty to examine this contention whether iron ore samplers are involved in any work connected with or related to a major port or are dock workers. The Tribunal may come to its own decision uninfluenced by the view taken by the High Court and if the question does require examination the same will have to be examined over again.

Accordingly, all these five appeals are allowed and the judgment of the High Court is quashed and set aside and the award of the Tribunal on the preliminary point especially about the competence of the Central Government to make the reference under Section 10(1) of the Industrial Disputes Act, 1947, for the reasons hereinmentioned is confirmed. The respondents shall pay the costs of the appellant in each case quantified at Rs. 1,000 in all Rs. 5,000 shall be paid by the respondents to the appellant as costs.

As the dispute is an old one, hanging resolution for years, the Tribunal is directed to give top priority to it and dispose it of on merits within a period of six months from today, N.V.K. Appeals allowed.