NASHIK WORKERS UNION

v.

HINDUSTAN AERONAUTICS LIMITED

(Civil Appeal Nos. 9332-9333 of 2010)

FEBRUARY 26, 2016

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Industrial Disputes Act, 1947 – s. 2(a) – Appropriate government – Complaint under the 1971 Act by the appellant-Workers Union against the respondent-Company (Hindustan Aeronautics Limited) for reinstatement of the trainees with continuity of services and back wages – Appropriate government to refer the said dispute – Division Bench of the High Court held that the appropriate government for the purpose of the 1947 Act is the Central Government in relation to the Company, thus, the complaints filed by the Union against the company were not maintainable – Held: Appropriate Government in relation to the respondent Company is the State Government – Matter remitted to the High Court for fresh adjudication on merits – Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

Allowing the appeals, the Court

HELD: 1.1 *****HAL 2* **has not taken note of earlier decision in ****HAL 1*. **It has been clearly held in *HAL 1* **that regard being had to the dictionary clause of the ID Act for the purpose of Hindustan Aeronautics Limited, it is the State Government which has to make the reference. In** *HAL 2* **the Court has referred to decision in ******SAIL's case* **and opined that it is undisputed that Hindustan Aeronautics Limited is an undertaking of the Central Government and it is the Central Government which exercises full control over the same and, therefore, the appropriate Government is the Central Government. This analysis runs counter to** *HAL 1* **and as well the ratio of the decision in** *SAIL's case*. **On the contrary there is no discussion either on the facts or the law. It has been opined that the facts are "undisputed". In** *HAL 1*, **the three-Judge Bench had referred to the decision in** *Heavy Engineering Mazdoor Union*. **As has been held in** *Tata*

A *Memorial Hospital Workers Union* case, the authority in *Heavy Engineering Mazdoor Union* has been approved in *SAIL* with some divergence. The authority in *SAIL's case*, as the conclusion would show, covers two situations-the unamended provision and the amended provision. It does not disturb the principles stated in *HAL 1*. Thus, two aspects, first, the *HAL 2* does not take note of B *HAL 1* and second, it proceeds on the basis of undisputed facts which are not stated. It is to be noted that there is nothing in the order in *HAL* 2 to suggest that Hindustan Aeronautics Limited is an agent of the Central Government. As *HAL 2* did not notice *HAL 1* which was approved in *SAIL's case*, it cannot be considered C as a binding precedent. Therefore, *HAL 1* still holds good and lays down the correct law and is binding as its foundation flows from *Heavy Engineering Mazdoor Union* which was approved in *SAIL* with some divergence. The divergence really does not affect the approval. *HAL 2* cannot be regarded as a binding precedent. D Thus, it is clear that the Division Bench of the High Court did not apply the ratio in *SAIL's case* correctly and, thus, the entire anlaysis has to be held to be fallacious. [Para 26][992-A-H]

1.2 It is perceptible that the High Court has not adverted to the merits of the case and dismissed L.P.A. of 2002 on the ground that it did not survive after dismissal of L.P.A. of 2006. E As the order passed in L.P.A. of 2006 is set aside and opined that the "appropriate Government" in relation to the respondent company is the State Government, the matter is remitted to the High Court for fresh adjudication on merits. The impugned order is set aside [Para 27, 28][993-A-C-]

F *Hindustan Aeronautics Limited v. Workmen and others* (HAL 1) (1975) 4 SCC 679: 1976 (1) SCR 231 – affirmed.

**Hindustan Aeronautics Limited and Another v. Hindustan Aeronautical Canteen Kamgar Sangh & G Others* (HAL 2) (2007) 15 SCC 51 – Not a binding precedent.

****Steel Authority of India and others v. National Union Waterfront Workers and others* (2001) 7 SCC 1:2001 (2) Suppl. SCR 343; *Heavy Engineering Mazdoor*

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Union v. The State of Bihar & ors **(1969) 1 SCC 765: 1970 (1) SCR 995;** *Food Corpn. of India v. Transport & Dock Workers Union* **(1999) 7 SCC 59;** *Ramana Dayaram Shetty v. International Airport of India & others* **(1979) 3 SCC 489:1979 (3) SCR 1014;** *Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee* **(1980) 3 SCC 459:1980 (2) SCR 773;** *Rashtriya Mill Mazdoor Sangh v. Model Mills* **1984 Supp. SCC 443: 1985 SCR 751;** *Food Corpn. of India Workers' Union v. Food Corpn. of India & others* **(1985) 2 SCC 294: 1985 (3) SCR 150;** *Air India Statutory Corpn. & others v. United Labour Union and others* **(1997) 9 SCC 377:1996 (9) Suppl. SCR 579;** *Tata Memorial Hospital Workers Union v. Tata Memorial Centre and another* **(2010) 8 SCC 480:2010 (9) SCR 723 – referred to.**

Case Law Reference

2001 (2) Suppl. SCR 343	**Referred to.**	**Para 5**
1970 (1) SCR 995	**Referred to.**	**Para 8**
(1999) 7 SCC 59	**Referred to.**	**Para 11**
1979 (3) SCR 1014	**Referred to.**	**Para 14**
1980 (2) SCR 773	**Referred to.**	**Para 14**
1985 SCR 751	**Referred to.**	**Para 17**
1985 (3) SCR 150	**Referred to.**	**Para 17**
1996 (9) Suppl. SCR 579	**Referred to.**	**Para 17**
2010 (9) SCR 723	**Referred to.**	**Para 22**
1976 (1) SCR 231	**Affirmed.**	**Para 26**
(2007) 15 SCC 51	**Not a binding precedent.**	**Para 26**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9332-9333 of 2010

From the Judgment and Order dated 25.06.2009 of the Division Bench of the Bombay High Court in LPA No. 144 of 2002 and LPA No. 84 of 2006 in Writ Petition No. 3562 of 1997

A Colin Gonsalves, Kamlesh Kumar Mishra, Jyoti Mendiratta for the Appellant.

S. Guru Krishna Kumar, Dhananjay Baijal, N. Sai Vinod, Nikhil Nayyar for the Respondent.

The Judgment of the Court was delivered by

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DIPAK MISRA, J. 1.The present appeals are directed against the judgment and order dated 25.06.2009 passed by the High Court of Judicature at Bombay in Letters Patent Appeal No. 84 of 2006 whereby the Division Bench has invalidated the order of the learned single Judge rendered in Writ Petition No. 3562 of 1997 expressing the view that the C State Government is the appropriate Government in relation to the respondent-Company for the purpose of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "the 1971 Act").

2. The facts which are essential to be stated for adjudication of D these appeals are that the appellant, Nashik Workers Union, filed a complaint under the 1971 Act being Complaint (ULP) No. 35 of 1990 for reinstatement of the trainees with continuity of services and back wages. During the pendency of the first complaint, as further employees were relieved, another complaint being Complaint (ULP) No. 36 of 1990 E was filed. With the passage of time, two other complaints forming the subject matter of Complaint (ULP) Nos. 44 of 1990 and 45 of 1990 also came to be registered before the Presiding Officer-Judge, Labour Court, Nasik. The Labour Court appreciated the material brought on record, declared that the employer had engaged in unfair labour practices in terminating the services of the employees and, accordingly, directed for F reinstatement of the employees with continuity of service and full back wages from the date of termination till reinstatement. The said order was to be complied with within one month from the date of the order, that is, 08.08.1994.

3. The aforesaid order passed by the Labour Court came to be G assailed in Revision Application (ULP) Nos. 140 of 1994 and 28-30 of 1995 before the Industrial Court. The Industrial Court, Maharashtra at Thane affirmed the order passed by the Labour Court and dismissed the revision applications vide order dated 8th July, 1997.

4. The orders passed by the Labour Court and Industrial Court H were assailed in Writ Petition No. 3562 of 1997 wherein a contention

was raised that the "appropriate Government" in respect of the dispute was the Central Government and not the State Government and, therefore, the 1971 Act would not apply and consequently, the complaints filed by the workers' union deserved to be dismissed. The learned single Judge appreciating the materials brought on record allowed the Writ Petition and directed the employer to make an offer to some trainees as and when regular vacancies arise for consideration and in the event they fulfill the required qualification then to consider them for regular job.

5. The aforesaid order was challenged by the employer by preferring an intra-court appeal. Though the learned single Judge had set aside the orders passed by the Labour Court as well as of the Industrial Court, yet he had not accepted the contention of the employer that in relation to it the appropriate Government is the Central Government and, therefore, complaint under the 1971 Act was not maintainable. It was contended by the appellant before the Division Bench that the Central Government is the appropriate Government in relation to the employer company and not the State Government and to bolster the said submission reliance was placed on ***Steel Authority of India and others v. National Union Waterfront Workers and others***[1] and also on ***Hindustan Aeronautics Limited & another v. Hindustan Aeronautical Canteen Kamgar Sangh & others***[2], (***HAL 2***). That apart, inspiration was also drawn from the order passed in Civil Appeal No. 5655 of 2008 dated 04.12.2008.

6. The Division Bench relying on the aforesaid decisions opined that the appropriate Government for the purpose of the Industrial Disputes Act, 1947 (for short, "the ID Act") is the Central Government which is the appropriate Government in relation to the company and, accordingly, the complaints filed by the Union against the company were not maintainable. Being of this view, it allowed Appeal No. 84 of 2006 and set aside the finding recorded by the learned single Judge. Be it noted, as the High Court arrived at the said conclusion in Appeal No. 84 of 2006, it opined that the other appeal being Appeal No. 144 of 2002 did not merit any consideration. The aforesaid order is the subject matter of scrutiny in these appeals.

[1] (2001) 7 SCC 1

[2] (2007) 15 SCC 51

A 7. We have heard Mr. Colin Gonsalves, learned senior counsel for the appellant and Mr. S. Guru Krishna Kumar, learned senior counsel for the respondent.

8. At the very outset, we think it pertinent to state that as the Division Bench has not dwelt on the merits of the case and only decided B the appeal on the ground of maintainability of the complaints, we shall confine our address to the said facet only. The issue of appropriate Government in relation to the respondent-company has a history which compels us to travel in a time machine. Four decades back, ***Hindustan Aeronautics Limited v. Workmen and others***[3], (***HAL 1***), as the facts would reveal, the Government of West Bengal had made a reference C under Section 10(1) of the ID Act for adjudication of certain issues between the employees and the employer. The tribunal had granted partial relief to the workmen. Feeling grieved by the said award, the employer had preferred an appeal by special leave before this Court. The competence of the Government of West Bengal to make the reference D which was challenged before the tribunal was also assailed before this Court. It was contended that as the Central Government owns the entire bundle of shares in the company and appoints and removes the Board of Directors as well as the Chairman and the Managing Director and further all matters of importance are reserved for the decision of the President of India and ultimately executed in accordance with his directions, it is E unmistakably clear that that the company is in control of the Central Government in the matter of carrying on the industry owned by the company. In that backdrop it was urged that industrial dispute in question concerned an industry which was carried on "under the authority of the Central Government" within the meaning of Section 2(a)(i) of the ID F Act and hence, the Central Government was the only appropriate Government to make the reference under Section 10 of the said Act. The three-Judge Bench took note of the fact that an identical submission was advanced in ***Heavy Engineering Mazdoor Union v. The State of Bihar & ors***[4] which was repelled by this Court. Be it noted, the three-Judge Bench in ***HAL 1*** reproduced a passage from ***Heavy Engineering*** G ***Mazdoor Union*** (supra) which is to the following effect:-

[3] (1975) 4 SCC 679

H [4] (1969) 1 SCC 765

"It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. 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* v. *Public Works Commissioners*[5] 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 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 *State Trading Corporation of India Ltd.* v. *Commercial Tax Officer, Visakhapatnam*[6] and *Tamlin* v. *Hannaford*[7]). Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. (cf. *London County Territorial and Auxiliary Forces Association* v. *Nichols*[8])."

9. An effort was made to distinguish the said judgment on the ground that the case of ***Heavy Engineering Mazdoor Union*** (supra)

[5] (1901) 2 KB 781 : 70 LJ KB 860 : 17 TLR 540

[6] (1964) 4 SCR 99. 188 : AIR 1963 SC 1811 Per Shah. J.

[7] (1950) 1 KB 18, 25, 26

[8] (1948) 2 All ER 432

A was such a case where the Government company was carrying on an industry where private sector undertakings were also operating and, therefore, it was not an industry which the Government alone was entitled to carry on to the exclusion of the private operators. The Court opined that the distinction so made was of no consequence and did not affect the ratio of the earlier decision. The Court further proceeded to state B that though Section 2(a)(i) of the ID Act has been amended from time to time to incorporate certain statutory corporations to make the Central Government an appropriate Government in relation to the industry carried on by them, but no public company even if the shares were exclusively owned by the Government was attempted to be roped in the said C definitions. Be it noted that the other limb of argument to challenge the competence of the West Bengal Government was that the dispute arose at Barrackpore branch which was under the control of the Bangalore division of the company. The said submission was not accepted. We are really not concerned with the second aspect of the case. As is demonstrable, the three-Judge Bench ruled that in relation to Hindustan D Aeronautics Limited, the State Government is the appropriate Government.

10. From the aforesaid analysis made by the Court in the said case, as we notice the Court has been guided by the principles stated in ***Heavy Engineering Mazdoor Union*** (supra) and the provision E contained in Section 2(a)(i) of the ID Act which though had incorporated certain definitions to make the Central Government the "appropriate Government" in relation to the industry carried on by them, but no public company even if the shares were exclusively owned by the Government was attempted to be brought within the ambit and sweep of that said F definitions.

11. In the instant case, it is perceivable that the Division Bench has dislodged the finding of the learned single Judge on the basis of the decision of the Constitution Bench in ***SAIL's case***. One of the reasons the matter was placed before the Constitution Bench was that a two-G Judge Bench in ***Food Corpn. of India v. Transport & Dock Workers Union***[9] had noticed the conflict of opinion between different Benches including two three-Judge Benches of the Court on the interpretation of the expression "appropriate Government" in Section 2(1)(a) of the

H [9] (1999) 7 SCC 59

Contract Labour (Regulation and Abolition) Act, 1970 (for short, "CLRA Act") and in Section 2(a) of the ID Act. The larger Bench had posed three issues for determination and one of them was – "what is the true and correct import of the expression "appropriate Government" as defined in clause (a) of sub-section (1) of Section 2 of the CLRA Act?" Adverting to the said point, the learned Solicitor General had conceded that the State Government is the appropriate Government in respect of the establishment of the Central Government companies in question. The counter stand was that in view of the amended definition of the "appropriate Government" in the CLRA Act with effect from 28.01.1986, the Central Government would be the "appropriate Government". It was contended by the Food Corporation of India that the "appropriate Government" before and after the notification issued by the Central Government on 28.01.1986, was the Central Government.

12.The Constitution Bench referred to sub-section (1) of Section 2 of CLRA Act, which reads as follows:-

"2. (1) In this Act, unless the context otherwise requires,-

(*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 situate;"

The Court also took note of the unamended definition of "appropriate Government" contained in Section 2(1)(a). The said unamended provision reads as under:-

"2. (1)(*a*) 'appropriate Government' means—

(1) in relation to—

(*i*) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(*ii*) any establishment of any railway, cantonment board, major port, mine or oilfield, or

A (*iii*) any establishment of a banking or insurance company, the Central Government,

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

B 13. Referring to the unamended provision, it has been observed thus:-

"A plain reading of the unamended definition shows that the Central Government will be the appropriate Government if the establishment in question answers the description given in sub-clauses (*i*) to (*iii*). And in relation to any other establishment, the
C Government of the State, in which the establishment in question is situated, will be the appropriate Government. So far as sub-clauses (*ii*) and (*iii*) are concerned, they present no difficulty. The discussion has centred round sub-clause (*i*). It may be seen that sub-clause (*i*) has two limbs. The first limb takes in an
D establishment pertaining to *any industry carried on by or under the authority of the Central Government* and the second limb embraces such controlled industries as may be specified in that behalf by the Central Government."

14. After so stating, the Court referred to the authorities in
E ***Ramana Dayaram Shetty v. International Airport of India & others***[10] and ***Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee***[11] and many others and opined thus:-

"37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/
F 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
G obligations under various Central and/or State Acts or under private law.

[10] (1979) 3 SCC 489

H [11] (1980) 3 SCC 459

38. From the above discussion, it follows that the fact of being an instrumentality of a Central/State Government or being "State" within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of "appropriate Government" in the CLRA Act. Take the case of a State Government corporation/company/undertaking set up and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry, can it be said that the appropriate Government is the Central Government? We think the answer must be in the negative. ..."

And again:-

"There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to the Central Government though they may be "State" within the meaning of Article 12 of the Constitution. We have held above that being the instrumentality or agency of the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. Therefore, it will be incorrect to say that in relation to any establishment of a Central Government company/undertaking, the appropriate Government will be the Central Government. <u>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.</u> 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

A 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."
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[Emphasis supplied]

15. After so stating, the Court adverted to the amended definition of "appropriate Government" which bears the same meaning as given in clause (a) of Section 2 of the ID Act. After referring to the decision in the amended provision, it was noted that it is evident that the phrase *"any industry carried on by or under the authority of the Central Government"* is a common factor in both the unamended as well as the amended definition. While adverting to the various aspects, the larger Bench referred to the decision in ***Heavy Engineering Mazdoor Union*** (supra) and in that context, after appreciating the reasons in the said decision, it has observed thus:-
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"... A two-Judge Bench of this Court elaborately dealt with the question of appropriate Government and concluded that the mere fact that the entire share capital was contributed by the Central Government and the fact that all its shares were held by the President of India and certain officers of the Central Government, would not make any difference. It was held that in the absence of a statutory provision, a commercial corporation acting on its own behalf, even though it was controlled, wholly or partially, by a government department would be ordinarily presumed not to be a servant or agent of the State. It was, however, clarified 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. It must be mentioned here that in the light of the judgments of this Court, referred to above, it is difficult to agree with the distinction between a governmental activity and commercial function of government companies set up and owned by the Government, insofar as their function in the realm of public law is concerned. ..."
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16. After referring to the said decision, the Court adverted to the decision in ***HAL 1*** and opined thus:-

> "... Having regard to the definitions of the terms "appropriate Government" and "establishment" in Section 2 of the CLRA Act, it cannot be said that the factors which weighed with the Court were irrelevant. It was also pointed out therein that from time to time certain statutory corporations were included in the definition but no public company of which the shares were exclusively owned by the Government, was roped in the definition. What we have expressed above about *Heavy Engg. Case* (supra) will equally apply here."

17. Be it noted, the Court referred to the authorities in ***Rashtriya Mill Mazdoor Sangh v. Model Mills***[12] and ***Food Corpn. of India Workers' Union v. Food Corpn. of India & others***[13] and proceeded to state what has been stated in ***Air India Statutory Corpn. & others v. United Labour Union and others***[14], that is, from the inception of the CLRA Act, the "appropriate Government" was the Central Government and thereafter, opined that:-

> "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* (supra). Point (*i*) is answered accordingly."

[12] 1984 Supp. SCC 443

[13] (1985) 2 SCC 294

[14] (1997) 9 SCC 377

A 18. While summing up the conclusions in respect of the aforesaid facet, it has been ruled as follows:-

> "(1)(*a*) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;
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> (*b*) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (*a*) of Section 2 of the Industrial Disputes Act; if (*i*) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (*ii*) any industry is carried on (*a*) by or under the authority of the Central Government, or (*b*) by a railway company; or (*c*) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government."

19. Relying on the aforesaid deliberations, it is submitted by Mr. Gonsalves, learned senior counsel for the appellant that as far as the respondent company is concerned, factually it is not carried on by the Central Government nor it is authorized on behalf of the Central Government to run the industry and the said reasoning, has neither been over-turned nor altered by the Constitution bench. On the contrary, it is urged by Mr. Gonsalves that the view expressed in ***HAL 1*** (supra) has been affirmed by the Constitution Bench. It is propounded by him that the amended provision does not change the nature and character of Hindustan Aeronautics Limited as the definition does not take within its ambit and sweep such a corporation.

20. Learned counsel for the respondent has drawn inspiration from the authority in ***HAL 2*** (supra). In the said case it has been held thus:- A

> "The question that arises for consideration in this case is, whether the High Court was justified in holding that the State Government is the "appropriate Government" under the provisions of the relevant Act. The Constitution Bench recently has considered the relevant provisions of the Contract Labour Regulation Act in *SAIL* v. *National Union Waterfront Workers* (supra) and has come to the conclusion that the "appropriate government" will be the government which exercises control and authority over the organisation concerned. It is undisputed that Hindustan Aeronautics Ltd. is an undertaking of the Central Government and it is the Central Government which exercises full control over the same. Issuance of licence by the State Government is no criteria to come to a conclusion that the State Government would be the "appropriate government". The impugned judgment of the High Court therefore is, on the face of it, erroneous in view of the Constitution Bench decision of this Court referred to earlier. We, therefore, set aside the impugned judgment of the High Court and hold that the Central Government is the "appropriate government"." B C D

21. As we find, the aforesaid decision arrives at the conclusion that Hindustan Aeronautics Limited is an undertaking of the Central Government and it is the Central Government which exercises full control over the same and, therefore, the Central Government would be the "appropriate government". The stand of the respondent company is that it carries on sovereign functions under the permission of the Central Government and certain crucial aspects were not considered in ***HAL 1*** (supra) and the analysis made in ***HAL 2*** (supra) is the correct and legally justified. Relying heavily on the decision in ***SAIL's case***, it is put forth that the respondent company carries its operation under the authority of the Central Government due to specific conferment of power and permission granted by the Central Government to it and, therefore, it is to be deemed that the permission had been granted by the Central Government to the respondent company. Elucidating further that the respondent company is under the control of the Central Government, reference has been made to Section 2 of the Industries (Development and Regulation) Act, 1951 which declares that regard being had to E F G

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A expediency of control by the Union, it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Learned senior counsel for the respondent has drawn our attention to Entry 7(1) of the First Schedule which deals with 'Aircraft' and Entry 37 which deals with 'Defence Industries – Arms and Ammunition' and, on that basis submits that the respondent company B being the exclusive manufacturer it has to be treated as one under the control of the Central Government. Learned senior counsel for the respondent had urged that in ***HAL 1*** (supra), the Court did not consider the fact that the respondent company carried on by virtue of, and pursuant to, conferment of, grant of, or delegation of power or permission by the C Central Government, and, therefore, the said decision does not state the correct proposition of law. It is argued that the Division Bench of the High Court has correctly applied the test stipulated in ***SAIL*** (supra) and hence, it is absolutely impeccable. Highlighting the said facet, it is contended that decision in ***HAL 1*** (supra) is *per incuriam*.

D 22. Our attention has also been drawn to ***Tata Memorial Hospital Workers Union v. Tata Memorial Centre and another***[15] by the learned counsel for the appellant. In the said case, it has been held that for the first respondent-establishment therein the Central Government was the appropriate Government for the purposes application of Section 2(3) of the 1971 Act. After adverting to the necessary and relevant provisions E of 1971 Act, the three-Judge Bench referred to Section 2(1) of ID Act and observed that from the definition it is clear that under the ID 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 F Government. Excluding these two categories of industries in relation to any other industrial dispute, it is the State Government which is the "appropriate Government". The Court adverted to the phrase "any industry carried on by or under the authority" of the Central Government. The Court posed the question – whether the Division Bench of the High Court has correctly applied the law laid down in ***SAIL's case***. The Court G noticed that judgment in ***SAIL's case*** has reiterated the law laid down in ***Heavy Engineering Mazdoor Union*** (supra) though with a little divergence and thought it appropriate to examine as to how the concept of "appropriate Government" has been explained by the Courts in the

H [15] (2010) 8 SCC 480

later leading decisions. The Court analysed the principles stated in ***Heavy Engineering Mazdoor Union*** (supra) at length and ***HAL 1*** (supra). It also referred to the authority in ***Rashtriya Mill Mazdoor Sangh*** (supra) and various authorities, including the one in ***Air India Statutory Corpn.*** (supra). The Court thereafter referred to paragraphs 37 to 41, 43, 45 and 46 of ***SAIL's case*** and noted the submissions of the learned counsel for the parties and came to hold thus:-

> "57. 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 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 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.
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> 59. 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 the Posts and Telegraphs, 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 *SAIL* (supra), the approach of the different Benches in the 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

A interpreted in *Heavy Engg.* (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 Engg. Mazdoor Union case* (supra). However, where a B statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State.

60. The judgment in *Heavy Engg. Mazdoor Union* (supra) observed that the inference that a corporation was an agent of the Government might also be drawn where it was performing in C substance governmental and non-commercial functions. The Constitution Bench in *SAIL 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 Engg.* (supra) judgment is otherwise completely approved, wherein it is made clear that the D 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 E is contributed by the Central Government and wages and salaries are determined by it, was also held to be not relevant."

23. At this stage, we may note with profit that the three-Judge Bench has stated that the Constitution Bench in ***SAIL*** (supra) has agreed with the view expressed in ***Heavy Engineering Mazdoor Union*** (supra) with little divergence. The same has been explained in the following F manner:-

"45. In para 41 of the judgment in *SAIL case* (supra), the Constitution Bench examined the judgment in *Heavy Engg. Mazdoor Union case* (supra). In *Heavy Engg. Mazdoor Union* (supra) the Court had observed that an inference that the G 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 H 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. In para 42, the Constitution Bench examined the judgment of *Hindustan Aeronautics Ltd.* (supra) The Constitution Bench noted that the judgment in *Heavy Engg. Mazdoor Union case* (supra) 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."

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24. It is also necessary to note here that the three-Judge Bench referred to ***HAL 1*** (supra) and ruled thus:-

> "In *Hindustan Aeronautics* (supra) 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* (supra) the fact that the authorised 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."

D E

25. Thus, as is evident, in ***Tata Memorial Hospital Workers Union*** (supra) the Court had analysed the propositions in ***SAIL*** (supra) and opined that the same have to be seen in the background of the facts and 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. It is further ruled that industry or undertaking has to be carried under the authority of the Central Government or the State Government and that authority may be conferred either by a statute or by virtue of a relationship of principal and agent, or delegation of power. It has also been observed therein that when it comes conferring power by statute, there is not much difficulty, however, where it is not so, whether the undertaking is functioning under authority or not is a question of fact.

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A 26. In the case at hand, the issue which arises for consideration is whether the decision in ***HAL 2*** (supra) can be regarded as a binding precedent. As is noticeable, ***HAL 2*** (supra) has not taken note of earlier decision in ***HAL 1*** (supra). It has been clearly held in ***HAL 1*** (supra) that regard being had to the dictionary clause of the ID Act for the purpose of Hindustan Aeronautics Limited, it is the State Government which has to make the reference. In ***HAL 2*** (supra) the Court has referred to decision in ***SAIL's case*** and opined that it is undisputed that Hindustan Aeronautics Limited is an undertaking of the Central Government and it is the Central Government which exercises full control over the same and, therefore, the appropriate Government is the Central Government. This analysis runs counter to ***HAL 1*** (supra) and as well the ratio of the decision in ***SAIL's case***. On the contrary there is no discussion either on the facts or the law. It has been opined that the facts are "undisputed". In ***HAL 1*** (supra), the three-Judge Bench had referred to the decision in ***Heavy Engineering Mazdoor Union*** (supra). As has been held in ***Tata Memorial Hospital Workers Union*** (supra), the authority in ***Heavy Engineering Mazdoor Union*** (supra) has been approved in ***SAIL*** (supra) with some divergence. The authority in ***SAIL's case***, as the conclusion would show, covers two situations – the unamended provision and the amended provision. It does not disturb the principles stated in ***HAL 1*** (supra). Thus, two aspects, first, the ***HAL 2*** (supra) does not take note of ***HAL 1*** (supra) and second, it proceeds on the basis of undisputed facts which are not stated. It is to be noted that there is nothing in the order in ***HAL 2*** (supra) to suggest that Hindustan Aeronautics Limited is an agent of the Central Government. In our considered opinion, as ***HAL 2*** (supra) has not noticed ***HAL 1*** (supra) which has been approved in ***SAIL's case***, it cannot be considered as a binding precedent. Therefore, we hold that ***HAL 1*** (supra) still holds good and lays down the correct law and we are bound by it as its foundation flows from ***Heavy Engineering Mazdoor Union*** (supra) which has been approved in ***SAIL*** (supra) with some divergence as has been stated in ***Tata Memorial Hospital Workers Union*** (supra). Be it stated, that divergence really does not affect the approval. We have no hesitation in our mind that ***HAL 2*** (supra) cannot be regarded as a binding precedent. Ergo, it is clear that the Division Bench of the High Court has not applied the ratio in ***SAIL's case*** correctly and, therefore, the entire anlaysis has to be held to be fallacious.

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27. The controversy does not end there. It is perceptible that the High Court has not adverted to the merits of the case and dismissed L.P.A. No. 144 of 2002 on the ground that it did not survive after dismissal of L.P.A. No. 84 of 2006. As we have set aside the order passed in L.P.A. No. 84 of 2006 and opined that the "appropriate Government" in relation to the respondent company is the State Government, the matter has to be remitted to the High Court for fresh adjudication on merits.

28. Consequently, the appeals are allowed and the impugned order is set aside and L.P.A. No. 144 of 2002 is remitted to the High Court to be adjudicated on merits. We request the High Court to dispose of the matter within six months hence. There shall be no order as to costs.

Nidhi Jain Appeals allowed.