IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1548 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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RAJENDRASINH VELUBHA JADEJA
Versus
GENERAL MANAGER (PROJECT)

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Appearance:
MR.DIPAK DAVE, ADVOCATE for JEET Y RAJYAGURU(8039) for the Petitioner(s) No. 1,2,3
MR.UTKARSH SHARMA, AGP for the Respondent(s) No. 3
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 11/07/2022

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India has been filed by the petitioners for a prayer to set aside the decision of the Labour Commissioner dated 26.07.2018.

2. Facts in brief are as under:

2.1 The petitioners, as per their case are working on a monthly rated basis for several years with the respondent Gujarat Mineral Development Corporation Limited. According to their case they are discharging regular nature of work and they are being paid on monthly rated basis and not the regular pay as is being paid to the permanent workers. For the purposes of making their claim for regular benefits, through the union the petitioners raised an industrial dispute regarding their entitlement to the benefits of the Government Resolution dated 17.10.1988.

2.2 The Corporation refused to accept the demand and therefore the dispute was referred to the conciliation officer under the State of Gujarat.

2.3 By the impugned order the conciliation officer of the state has opined that he has no jurisdiction to conduct the conciliation proceedings because it is

the Central Government which is the "appropriate government" as defined under the Industrial Disputes Act, 1947. This decision is the subject matter of challenge in this petition.

3. Mr Dipak Dave learned advocate appearing for Mr Jeet Rajyaguru learned advocate for the petitioners made the following submissions.

4. The dispute raised before the Assistant Labour Commissioner Gandhidham was for seeking benefits of the Government Resolution dated 17.10.1988 and consequential benefits. It is an admitted position that the employees were working at the Gadhsisa Office. The contention of the GMDC that the workmen were serving under the Mines and therefore as per the provisions of The Industrial Disputes Act,1947 and the Mines Act the appropriate government being the central government is misconceived.

5. He would further submit that the petitioners are doing clerical nature of work and they have no

concern with the mine. The employees are transferable from one office to the other. GMDC has several offices across the state of which one is at Gadhsisa. The entire establishment therefore cannot be held and termed as a Mine.

6. Reading the definitions under section 2(a) of The Industrial Disputes Act which defines “appropriate government” he would submit that the legislature has specifically made a distinction between the term “industrial dispute “and “industry”. The word used in the definition under section 2 (a) “is in relation to any dispute concerning a mine”. Where an industrial dispute is related to State Undertaking, the appropriate government is the state government. The definition specifically provides that when the industrial dispute is concerning a mine only then the appropriate government is the Central Government. Here the industrial dispute is concerning the service conditions in the GMDC and not a mine.

7. The legislature specifically therefore has not used the term “The industrial dispute concerning an employee working in the mine”. According to the learned counsel it will make a lot of difference in interpretation of the language of the section. Reliance is placed on the decision of the Patna High Court in the case of ***Employers In Relation To The Management of Tata Iron and Steel Company Limited versus Presiding Officer Central Government Industrial Tribunal cum Labour Court Number 1*** reported in ***1988 LawSuit Patna 143***.

8. Learned Advocate for the petitioners would dispute the contention of the respondents that the definition of “mines” under section 2(j) and 2(h) have undergone a sea change after the judgement in the case of ***Serajuddin and Co versus Workmen*** reported in ***1996 AIR (SC) 921***. The Patna High Court has considered the amended definition of section 2 (j) as was introduced by the amendment in the year 1984.

9. Even if the contention of the respondent that the petitioners are persons employed in the mine is accepted merely because the petitioners are the persons who can be held to be employed in a mine it could not convert the industrial dispute raised by the petitioners as an industrial dispute concerning a mine. The definition of “office of a mine” as provided in section 2 (k) of The Mines Act would make things very clear. The office is not included in the definition of mines even after the amendment. In the present case admittedly the benefits sought are the one under the Government Resolution dated 17.10.1988 and therefore the dispute was not concerning a mine and therefore the appropriate government would be the State Government. He would submit that the decision of the supreme court in the case of ***Serajuddin*** (supra) and that of the ***Tata Iron and Steel Company Limited*** (supra) are to be viewed in this context.

10. Mr Varun Patel appearing for the Gujarat Mineral Development Corporation would make the following submissions.

11. He would extensively read the definitions of the term into “appropriate government” under section 2 (a) of The Industrial Disputes Act. Section 2 (lb) of “mine” and the definition of “mine” and a person who is said to be employed in a mine under section 2(j) and 2(h) of the Mines Act 1952. He would submit that the petitioners are working as monthly rated workers at the Gadhsisa Project of mines under the Corporation. The nature of duties have been have been set out by the petitioners themselves in Para 12(C) of the Petition. This clearly establishes that the petitioners are involved in a work which is incidental to and connected with the mining operations. The dispute raised by the petitioners therefore is an industrial dispute concerning a mine and the appropriate government therefore is the central government.

12. With reference to the decision in the case of ***Serajuddin*** (supra) he would refer to Para 6 and 7 the decision and submit that the decision was distinguishable on facts. The dispute before the Apex Court was in connection with the workmen engaged at the Head Office at Calcutta where the mining operations were carried out in the State of Orissa. The work carried out at the office at Calcutta consists principally of sales operation which really begins after the minerals are ready and all operations incidental to or connected with the mining over. In the present case the petitioners are working in the mining area and they are engaged in the activities which are incidental to are connected with the mining operations. He would rely on para 9 of the decision in the case of ***Serajuddin*** (supra.)

13. Referring to the decision of the Patna High Court, Mr. Patel would rely on paras 36, 37, 47 to 53, 56, 62 to 64 and 70 of the decision. He would submit the decision is distinguishable on facts. Reading para 47 of the decision, he would submit that the decision

has framed issues for examination as to whether the dispute raised by the concerned workman are identical to or are connected with the mining operations. In para 49 the court has observed that the concerned workmen look after the books of record in the collieries. After observing the nature of duties performed by the concerned workman the High Court in para 50 had concluded that the concerned workmen are not directly concerned with or connected with mining operations. In the present case the petitioners are engaged in activities which are directly incidental to or connected with mining operations.

14. Mr Patel would submit that the decision of the High Court is prior to the amendment of 1983. In other words the definition of “mine” and the term “ person employed in a mine” have been considered by the High Court prior to the amendment. Reading the paragraph of the relevant decision Mr Patel would submit that the High Court has not independently evaluated the definition of “mine.”

15. Reliance is also placed on the Statement Of Objects And Reasons of the Amendment Act in support of his submission that appropriate government is the Central Government.

16. Having considered the submissions made by the learned Advocates for the respective parties the Court needs to consider whether in the facts of the present case it is the State Government or the Central Government which is the "Appropriate Government" under the Industrial disputes Act, 1947.

17. From the facts as pleaded in the petition together with the annexures to the petition it appears that it is a case of the petitioners that they are working under the respondent GMDC. A dispute was raised with regard to the benefits of the Resolution dated 17.10.1988. The case of the petitioners is that the respondent carries out two types of activities namely mining activity and non-mining activity where in the petitioners are employed. It is their case that they

are working in the stores department and sometimes also working in the plant for collecting samples and they are also doing shift duty works for preparing plant reports. Sometimes they are also discharging duties for maintaining registers on weigh bridge at the Project. They are discharging the work not mainly connected to mining activities or mining operations. It is therefore their case that the central government is not the appropriate government.

18. The definition of the term “appropriate government “ is set out in section 2(a) of the Industrial Disputes Act, 1947.

2(a) Appropriate Government:

(a) “appropriate Government” means- (i) in relation to any industrial dispute concerning 3[***] any industry carried on by or under the authority of the Central Government, 4[***] or by a railway company 5[or concerning any such controlled industry as may be specified in this behalf by the Central Government 6[***] or in relation to an industrial dispute concerning 7[8[9[10[a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or 11[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees State Insurance Corporation established under Section

3 of the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), 1[****], or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 2[the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or 3[the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994)] or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976) or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], 4[the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 (53 of 1987), or 5[6[an air transport service, or a banking or an insurance company], a mine, an oil-field], 7[a Cantonment Board], or a major port, the the Central Government, and]]

(ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.]

19. The definition reads as under;

The term “mine” is defined in Section 2(lb) of The

Industrial Disputes Act, 1947 and reads as under:

2(lb) “mine” means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952)];

“Mine” is defined under Section 2(j) of the The

Mines Act, 1982 and reads as under:

(j) “mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes—

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial rope-ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator, storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting dressing or preparation for sale of minerals or of coke is being carried on;]

The term with relation to a person employed in a mine is defined in Section 2(h) of the Mines Act and reads as under:

2(h) a person is paid to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not—

(i) in any mining operation (including the concomitant operations of handling and transport of minerals upto the point of dispatch and of gathering sand and transport thereof to the mine);

(ii) in operations or services relating to the development of the mine including construction of plan therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;

(iii) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

(iv) in operations, within the premises of the mine, of loading for dispatch of minerals;

(v) in any office of the mine;

(vi) in any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the

premises of the mine excluding residential area; or

(vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations;]

The term " office of the mine" is defined in Section 2(k) of the Mines Act and reads as under:

2(k) "office of the mine" means an office at the surface of the mine concerned;

20. Considering the aforesaid definitions what is made out is that when an industrial dispute concerning a mine arises, the appropriate government is the Central Govt.

21. The dispute at hand is whether the petitioners are employed in the mine inasmuch as they are working in mining operations of handling and transport of minerals, in operations or services relating to the development of the mine, maintaining and repairing any part of the machinery used in the mine, operations within the premises of the mine offloading for dispatch of minerals, in any office of the mine, in any welfare health sanitary or

conservancy services required to be provided under the mines act within the premises of the mine excluding residential area for any kind of work which is preparatory or incidental to or connected with the mining operations.

22. The term “office of the mine” means an office at the surface of the mine concerned.

23. “Mine” is defined to mean where any operation for the purpose of searching for obtaining minerals by means of excavation is carried out. It includes operations set out in the definition of the term “mine”.

24. The Supreme Court in the case of ***Serajuddin and Co. V/s Workmen*** reported in ***AIR 1966 SC 921*** has considered the issue.

25. Before the Supreme Court a short question that arose was whether the West Bengal government was the appropriate government or whether it was the central government in relation to the four

employees. The employer was the appellant at Calcutta. A preliminary objection was raised by the appellant that the reference was invalid on the ground that the appropriate government between the parties was the central government and not the State Government.

26. An examination of facts reveal that the office of the employer was at Calcutta managing the work of the mines and looking after the sale of its mine products. The mines were in the State of Orissa. The employees working at Calcutta can be transferred to the mines. For the purpose of exercising direct supervisory control over the mining operations the appellant employ staff in the site at the mines. The submission of the learned counsel for the employer was that since of the office at Calcutta was an integral part of the mine, industrial dispute between the office and its employees was an industrial dispute concerning a mine and therefore the appropriate government must be the central government. After referring to the definitions of the

term “appropriate government” “mines, “office of the mine” etc, the Supreme Court considered the question whether the present dispute can be an industrial dispute concerning a mine. The Supreme Court held that in construing the words “an industrial dispute” in relation to a mine we must first determine what mine means and this must be done without reference to the broad definition of industry prescribed under section 2(j).

27. Extensively referring to the definition of the term “mine” under the Mines Act the Supreme Court observed that it is significant that the definition of ‘mine’ excludes an office of a mine which is separately defined in section 2(k) of the Mines Act as meaning an office at the surface of the mine concerned. Therefore there is no doubt that even if the office of the mine may be situated at the surface of the mine it is not within the definition of mine. This was also read in context of the term “person employed in a mine” under section 2(h) of The Mines Act to mean that the work has to be connected with

or incidental to mining operations. The court observed that it is obvious that the persons employed in the head office where ever it may be situated cannot be said to do the mining operations within the first part of the definition. The work that is carried out in the Head Office which principally consists of sales operations begins after the minerals are ready and all operations are over. The argument that the Head Office was itself part of the mine was an argument that was held to be without substance. It is in light of these facts that the Supreme Court observed that if the scheme of the Act shows that the office of the mine is outside the purview of the Act and the employees engaged in the office would therefore ordinarily not be governed by the major provisions of the Act, it would not be unreasonable to hold that an industrial dispute between such employee engaged in the office of the mine and the employer is not a dispute in which the central government would be interested.

28. It may be that some of the work done in the office of the mine situated at the surface of the mine may be incidental to or connected with the mining operations for example keeping muster roll of workmen of payment register maintained by them. Clerks engaged in such type of work may be said to be persons employed in the mine but the same was wholly unconnected with the mining operations. It is in light of this fact that the Supreme Court held that in the case of employees working at the Head Office the appropriate Government was the State Government and not the central government as the employees were doing work was wholly unconnected with mining operations.

> *"1. This appeal by special leave raises a very short question about the construction of a part of section 2(a) of the Industrial Disputes Act (I 4 of 1947) (hereinafter called the Act). That question arises in this way. On the 14th March, 1960, the Government of West Bengal referred for adjudication to the Fourth Industrial Tribunal six items of dispute between four employers and their respective employees. Amongst the employers was the appellant M/s. Serajuddin & Co.,p-16, Bentinck Street, Calcutta-1, and the items of dispute covered claims made by the employees for grade and scale, Dearness Allowance, House rent, leave and holidays, Provident Fund and Gratuity, and*

condition of service. It appears that all the workmen employed in the three other industrial concerns filed affidavits before the Tribunal intimating to it that they did not want to proceed with the case because the dispute between them and their respective employers had been settled. That is how the only dispute which was left before the Tribunal for its adjudication was the dispute between the appellant and its workmen.

2. On behalf of the appellant, a preliminary objection was raised against the validity of the, reference itself. It was urged that under s.2(a), the appropriate Government which could make a valid reference in relation to the present dispute between the parties was the Central Government and not the State Govt. of West Bengal and so, the reference made by the latter Government was unauthorised and incompetent and the Tribunal bad, therefore no jurisdiction to deal with it.This objection has been over-ruled by the Tribunal and the case has been set down for hearing on the merits. It is against this finding that the appellant has come to this Court by special leave and so the only point which has been raised by Mr. Sanyal on behalf of the appellant is that the appropriate Government under s. 2(a) 'is the Central Government and not the State Government of West Bengal.

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4. Section 2(a) (i) provides, inter aila, that unless there is anything repugnant in the subject or context," appropriate Government" means in relation to an industrial dispute concerning a mine the Central Government. The question which arises for our decision is whether the present dispute can he mid to be an industrial dispute concerning a' mine. Mr. Sanyal's Argument is that the word "industry" is wide enough to include the Head Office of a mining company, though it. may

be, situated away from the place where the mining operations are actually carried on; and it is in the light of the said definition of the word. "industry" contained in a. 2(j) that the words ",in relation, to a mine" must be construed. An "industrial dispute" under s. 2(k) means inter alia any dispute between employers and workmen and the expression "workman' means any person employed in any industry to do any skilled or unskilled work of. the type described by section 2 (a). Therefore, the words ,,industrial dispute" used in a. 2 a)(i) necessarily take us to the definition of the word ,industry" in s. 2(j) because an industrial dispute takes us to the definition of the workman and the definition of a workman inevitably brings in the definition of .,industry" in a. 2(j). That is how in construing the clause "an industrial dispute concerning a mine" we cannot avoid brining in the wide definition of the word "industry" in a. 2 (j) and in the light of the said definition, a mine must mean the industry of mining and that would include the Head Office which exercises general supervision over the mining operations of a company though it may be situated far away from the place' where the raid operations are conducted. That, in brief, is the argument urged in support of the appeal.

5. On the other hand, if we look at the definition in s.2(a)(i), it would be noticed that where it was intended to refer to an industry as such, the definition uses the word industry as for instance, it refers to industrial dispute concerning only such controlled industry as may be specified in this behalf by the Central Government, whereas in referring to the dispute in regard to a mine the definition does not refer to an industrial dispute concerning a mining industry but it merely says an industrial dispute concerning a mine. In the context, a mine is referred to just as a banking or an insurance company is referred to or an oil-field or a major port is referred. Therefore, in

construing the words ",an industrial dispute" in relation to a mine, we must first deter. mine what a mine means and 'this must be done without reference to the broad definition of industry prescribed by section 2(j).

6. In the absence of any definition of the word ",mine" in. the Act, we may take into account the dictionary meaning as excavation in earth for metal, coal, salt etc. The mines Act ('I 5 of 1952) also contains a definition of "'mine" in s. 2(j). The said definition shows, inter alia, that, a "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on. It. is significant that the definition of mine under s.2(j) excludes an office of a mine which is separately defined by s.2(k) as meaning an office at the surface of the mine concerned so that there is no doubt that the office of the mine, though it may be situated at the surface of the mine itself, is not within the definition of mine. This position is further clarified when we consider the definition of the person employed in a mine which is prescribed by s. 2(h). A person is said to be employed in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations. It is obvious that the persons employed in the Head Office wherever it may be situated cannot be said to do the mining operation within the first part of the definition. In our opinion, they cannot be, said to be ordinarily engaged in any other kind of work which is incidental to or connected with mining operations either. The work which is incidental to or connected with mining operations must have some connection with or relation to the mining operations themselves. The work that is carried on in the Head Office which

consists principally of the sale operations really begins after the minerals are ready and all operations incidental to or connected with them are over. This position is not disputed. Therefore, there can be no doubt that under the Mines Act, office of the mine, though situated at the surface of the mine, is not necessarily a mine and the employees in the said office cannot necessarily be said to be persons employed in a mine and so, the regulatory provisions of the Mines Act would not necessarily apply to the office and would not govern the conditions of service of the employees in the said office.

7. It is in the light of the dictionary meaning of the word "mine" or in the light of the definition of the word 'mine" contained in the Mines Act that we have to decide what an industrial dispute concerning a mine means under s.2(a)(i). Judged in that way, their can be no difficulty in holding that an industrial dispute between the employees engaged in the Head Office at Calcutta and the employer is not an industrial dispute concerning a mine. The lead Office is not a mine and so, an industrial dispute raised by the employees engaged in the Head Office is not an industrial dispute concerning a mine.

8. It is, however, urged by Mr. Sanyal on behalf of the appellant that a mining lease under the Mines and Minerals (Regulation and Development) Act (53 of 1948) means a lease granted for the purpose of searching for, winning, working, getting making merchantable, carrying away or disposing of minerals or for purposes connected therewith, and includes an exploring or a prospecting license. This Act has been substantially amended in 1957. But for the purpose of the argument urged on the definition of the 'mining lease" contained in s.(d), it is not necessary to refer to the subsequent amendments made in the Act or in the said definition itself. The argument is that a mining

case contains a provision which enables the lessee to carry away or dispose of the minerals and so, the process of disposal of the minerals being covered by the mining lease must be held to be integrally connected with the mining operations and since sales of minerals are looked after in the Head Office, the Head Office itself is a part of the mine. In our opinion, there is no substance in this argument. The purpose of granting a mining lease obviously is to enable the lessee to search for and win minerals and, make them merchantable. The said purpose must necessarily include the right of the lessee to carry away the minerals and to dispose of them in the market. But the rights conferred on the lessee under a mining lease can have no direct bearing on the question of the construction of s. 2(a)with which we are concerned. As we have already pointed out, in the absence of a definition of the word ,,mine" in the Act itself, we have to take either the dictionary meaning of the word or the definition of the word "mine" in the Mines Act. The rights conferred on the lessee in whose favour a mining lease is executed can be of no assistance in interpreting the word 'mine" in section 2(a)(i). Therefore, we are satisfied that the Tribunal was right in holding that the present dispute between the appellant and its employees at its Head Office at Calcutta is not a dispute in relation to a mine.

9. On general considerations also, the conclusion of the Tribunal appears to be right. The Central Government would be interested in industrial disputes in relation to a mine and so, in regard to such disputes, the Central Government is made the appropriate Government by s.(2)(a). In this connection, it would not be unreasonable to assume that the Central Government would be interested in industrial disputes relating to mines as defined by the mines Act. The relevant provisions of the mines Act are intended to regulate labour in mines and as the scheme of the

Act shows, several provisions have been made by the Act for the health and safety of the persons working in the mines and provisions have also been made for hours and limitation of employment in that-behalf. If the scheme of the Act shows that office of the mine is outside the purview of the Act and the employees engaged in the office would, therefore, not ordinarily be governed by the major provisions of the Act, it would not be unreasonable to hold that an industrial dispute between such employees of the office of the mine and the employer is not a dispute in which the Central Government would be interested. It may be that some of the work done in the office of the mine situated at the surface of the mine may be incidental to or connected with the mining operations, as, e.g., keeping muster roll of workmen or payment register maintained for them. Clerks engaged in such type of work may, be said to be persons employed in a mine; but the work in the Head Office with which we are directly concerned in this appeal is wholly unconnected with mining operations. All industrial disputes which are outside a. 2(a)(i) are the concern of the State Government under section 2(a)(ii); in other words, the general rule is that an industrial dispute &rising between a employer and his employees would be referred for indication by the State Government, except in cases falling under section 2(a)(i); and so it is the extent of one of the exceptions mentioned in s. 2(a) (i) that we have to determine in the present case. In determining the extent of the said exception, it would not be irrelevant to bear in mind the scope of the provisions of the Mines Act itself. That it; why we think the fact that an office of a mine is outside the definition of a mine is of some assistance in interpreting the word ",'mine" under section 2(a) (i).”

29. The Patna High Court in the case of ***Employers In Relation To The Management Of Jamadoba Colliery Of Tata Iron And Steel Company Limited v/s Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court No.1*** reported in ***1988 LawSuit (Pat) 143*** was considering a case where the petitioner company had six coal mines of which one was at Jamadoba. According to the petitioner each colliery has an independent accounts section which is under the charge of a clerk. The management also has Finance and Accounts department situated at Jamshedpur. There is also a central accounts office at Jamadoba. Till sometime the provident fund account of the workers working in the collieries was maintained by the accounts section at individual collieries but Bonus accounts and leave accounts were maintained at the central office which was at the relevant time situated at Digwadih. A decision was then taken to connect the bonus posting work and provident fund work which was then transferred

to the central office. The workman in question at the relevant time is working under the Divisional Manager Jamadoba made a demand for a higher pay scale. The case of the workman was that they were doing more complex work in the central office than the employees working in the collieries.

30. The employer raised the preliminary objection stating that the clerks were not working in a mine and therefore the appropriate government was the State Government and not the central government.

31. In view of the submissions, the question that arose before the Patna High Court was as to whether the central government is the appropriate government or the state government in respect to the industrial disputes raised by the workmen. On facts it was found that the concerned employees were exclusively meant for the work of the five collieries and they had their office at Jamadoba colliery. The question therefore which was considered was whether the dispute raised by the concerned

workman was incidental to are connected with the mining operations and merely because the workmen are treated similarly to the workmen employed in a mine can they said to be employees engaged in connection with the mining operation. The Patna High Court observed that none of the workmen had any direct contribution to make in respect of a job necessary to be carried out which is “connected with” or “incidental to” the mining operations in a mine. Reading the ratio of the Supreme Court in the case of ***Serajuddin*** (supra) the Patna High Court observed that an office of a mine is not a mine unless the work performed there in if the same is situated on the surface of a mine concerns the actual mining operations carried out there indirectly and not remotely. On facts the Patna High Court found that the jobs of the concerned workman neither relate directly to a mining operation nor in fact concern particular mine, it is one of the office is where the central accounting relating to bonus provident fund etc is carried out. In this connection

the word "concerns" also plays an important role.

The relevant paragraphs in case of ***Jamadoba Colliery*** (supra) read as under:

"1. This writ petition is directed against art award dated 14-4-1977 passed by the respondent No. 1 in Reference Case No. 14 of 1975 and as contained in Annexure 2 to the writ petition whereby and whereunder the respondent No. 1 answered the reference in favour of the workmen and against the management.

..

3. According to the management-petitioner each colliery has an independent Accounts Section which is under the charge of a clerk known as accounts-in-charge. However, the employees of the aforementioned collieries are under the overall control and subordination of an officer called the Divisional Manager (Collieries).

4. The management has also a Finance and Accounts Department situated at Jamshedpur headed by the Director of Finance and Accounts under whose subordination there is a hierarchy of officers at Jamshedpur. There is also Central Accounts Office situated at Jamadoba consisting of a Chief Accounts Officer and Assistants Officers, Accountants and Clerks either in Special Grade, or in Grade I, or in Grade II or in Grade III.

..

9. The workmen in question, who are fifteen in number at all material times admittedly have been working under the Divisional Manager, Jamadoba in the Provident Fund Section. The said workmen raised a demand that they are entitled to a higher scale of pay namely, scales of pay admissible to clerk Grade I and Selection Grade as the jobs

performed by them if compared with the job of the staff of the Accounts Office, Jamshedpur, it would be found that the jobs of the petitioner are more responsible and complicated. The aforementioned workmen by a letter dated 14th February, 1974 addressed to the Director of Accounts M/s TISCG Limited requested him to revise the grades of clerks working in the accounts office. The said letter is contained in Annexure 3 to the writ petition.

25. In view of the rival contentions of the parties, in my opinion, the following questions arise for consideration in this writ petition.

(a) Whether the Central Government is the appropriate Government to make the reference in question in respect of the Industrial dispute raised by the workmen?

(b) Whether the respondent No. 3 Union had any locus standi to raise the dispute?

(c) Whether the demand raised by the respondent No. 3 Union and the reference are inconsistent with each other?

(d) Whether the award is vitiated in law and thus is liable to be questioned?

(e) Whether the retrospective operation of the award is valid in law?

26. Re: question No. A:-The first question raised by Sri Chatterjee is an important one. He submits that the 'dispute' raised by the concerned workmen is not such an industrial dispute in respect whereof the appropriate Government would be the Central Government.

27. According to Mr Chatterjee the dispute raised is a service/cadre dispute and it is not a dispute 'concerning a mine'. He submits that the essence of

a dispute does not depend upon the question as to whether the workmen concerned are doing work connected with a mine or not.

He further submits that the work done by the disputant may be connected with 'a mine' but the dispute raised by him may not be 'concerning a mine'.

He also submits that the respondent No. 1 has in fact found that the work of the concerned workman 'concerns a mine' but it has not been found by it that the dispute raised by them 'concerns a mine'.

28. Mr. Chatterjee, on the basis of the admitted facts of this case, further submits that the concerned workmen belong to the Jamshedpur Establishment of the Tata Iron and Steel Co. Ltd. and are under the administrative control of the Director of Finance and Accounts; who is also their appointing authority and as such the said establishment cannot be said to be a part and parcel of 'a mine'.

29. The concerned workmen, according to Mr. Chatterjee, are admittedly directly linked with the establishment situate at Jamshedpur, which would be evident from their demands as contained in Annexures 3 and 4 to the writ petition and as such they cannot be said to be engaged in a 'mine'.

30. Mr. Ghosh, on the other hand, submits that the tribunal has clearly found that the work of the concerned workmen are in connection with 'a mining operation'.

...

44. In the instant case, it is admitted that the concerned employees are exclusively meant for the

work of the five collieries and they have their office in Jamadoba colliery.

...

...

47. The questions which, therefore, arise for consideration are:--

> *(a) Whether the dispute raised by the concerned workmen are incidental to or connected with the mining operations?*
>
> *(b) Whether only because the workmen are treated similarly with the workmen employed in a mine and their service conditions are also governed by the Standing Orders of the Colliery, they can be said to be the employees engaged in connection with a 'mining operation'?*

48. From the schedule of duties as contained in Annexure 1 to the counter affidavit filed on behalf of the respondent No. 3 (Ext. M/3), in my opinion, none of the workmen can be said to be doing any job whatsoever which is directly connected with 'mining operations'.

49. It is pertinent to note that none of the workmen has any direct contribution to make in respect of a job necessary to be carried out which is 'connected with" or 'incidental to' the mining operations in a mine. In my opinion, the word 'mine' is significant. The Mines Act postulates that a person can be said to be employed in a mine if he is appointed by or with the knowledge of the Manager of the mine. Admittedly, the concerned workmen look after the Sonus and Provident Fund Section of the five

collieries belonging to M/s. Tat a Iron and Steel Co. Ltd. They maintain and/or scrutinise the records of Provident Fund, Bonus and Gratuity and some of them only make sample checking of bills and verify supplies made to the collieries.

50. It is, therefore, evident that none of the concerned workmen arc directly concerned with a matter 'connected with' or 'incidental to' mining operation in relation to 'a mine'.

51. A "manager" in terms of Section 17 of the Mines Act is incharge of a mine and the workmen, who are employed in a mine, therefore, must be working under the control or supervision of the Manager. The Manager is the only person to supervise or control the mining operation or any matter 'incidental to' or 'connected with' the mine. The manager of a particular colliery, therefore, will have no jurisdiction to control the work of a centralised office, which looks after a particular job in relation to the five coal mines. Further, only because the office of Bonus and Provident Fund Account Section is situated on the surface of the Jarnadoba (3 and 4 pits) does not necessarily mean that the same is an office of a 'mine'.

52. As has been pointed out in Serajuddin's case that the very fact that office of 'a mine' has been separately defined in the Mines Act goes to show that 'mine' does not include the office of 'a mine'.

53. In the instant case, it is admitted that the workmen concerned categorically stated in their representations dated 14th February, 1974 that they are working under the control of Director and Finance Accounts (Annexure 3).

54. From a perusal of the aforementioned Annexure 3 to the writ petition it further appears that the concerned workmen categorically stated as follows:

> *The jobs performed by the staff of Accounts Office may be compared with the job of the staff of Accounts Office at Jamshedpur under you and cannot be compared with the colliery clerks.*

55. Similarly, the respondent No. 3 Union also in its letter dated 8th June, 1974 (Annexure 4) addressed to the Director of Finance and Accounts, M/s. Tata Iron and Steel Co. Ltd. Jamshedpur stated as follows:--

> *Since our members are directly linked with your department, Colliery Authorities, over looks, ignore and by-pass our grievance.*

56. There cannot, therefore, be any doubt whatsoever that the concerned workmen had all along been taking the stand that they were under the control of the Director of Finance and Accounts, Jamshedpur and they were not the colliery staff. It is also not disputed by the concerned workmen that they were appointed by the Director of the Finance and Accounts and not by a Manager of a mine.

57. To me, it appears that the respondent No. 1 has misdirected himself in law in holding the jobs of the concerned workmen are connected with mining operation only because the concerned workmen have been getting some facilities as the workmen employed in a mine and they a re being governed by the colliery service rules as also they come within the purview of the National Coal Wage Agreements.

58. It is now well-known that a distinction has to be made between a 'mine' and a 'mining industry'. The persons, who are working in a mining industry

would be governed by the terms and conditions applicable to the employees of the industry including the conditions of service appertaining thereto. Reference in this connection may be made to Ballarpur Collieries Co. v. State Industrial Court, Nagpur and Ors. , wherein it has been held after distinguishing the Serajuddin's case (supra) that when a notification uses the word 'mining industry', the same includes a head office also which must be treated as an integral part of the 'mining industry' as the same deals with the subsequent steps taken to dispose of the coal raised from the collieries. It is, therefore, clear that 'a mine' cannot be equated with 'a mining industry'.

59. Further, only because certain benefits which are normally given to the workmen in a mine are also being given to the concerned workmen; the same does not necessarily mean that their jobs would be 'incidental to' or 'connected with' the mine operations.

60. True it is that in Serajuddin's case (supra) the Supreme Court has observed that it may be that some of the work done in the office of the mine situated at the surface of the mine may be 'incidental to' or 'connected with' mining operation, as for example, keeping muster roll of workmen or payment register maintained for them.

61. However, these observations of the Supreme Court, in my opinion, are of no help to the respondent No. 3.

62. The aforementioned observation of the Supreme Court has to be read keeping in view the other parts of the judgment, and the 'ratio' must deciphered on the basis thereof.

63. The 'ratio' of the decision of the Supreme Court in Serajuddin's case, to me, appears to be that an office of a mine is not a mine unless the work performed therein, if the same is situated on the surface of a mine concerns the actual mining operations carried out therein directly and not' remotely. There cannot be any doubt that in such a situation the job performed in the office of a mine would be proximately, immediately or directly connected with the mining operations.

64. In the instant case, as stated hereinbefore, the situation is entirely different. The jobs of the concerned workmen neither relate directly to a mining operation nor in fact concern a particular mine It is one of the offices where the centralised accounting relating to Bonus, Provident Fund etc. of five different coal mines of the entire region, is carried out, In this connection the word 'concerns' also plays an important role.

65. In Black's Law Dictionary, 5th Edition the word 'concern' has been defined as to mean; to pertain; 'to relate or belonging to'; 'be of interest or importance to'; 'have connection with'; 'to have reference to'; 'to involve'; 'affect the interest of.

66. The word 'concerning' according to the Webster 3rd New International Dictionary means 'relate to'; 'regarding'; 'respecting'; 'about an affair with the concern one'.

> *In this connection reference may also be made to Boscawen v. Wyndham 1921 Vol. 1 Chancery Division 257 at page 267, wherein it has been held that the word 'concerning' is synonimous with the word 'affecting'. In my opinion this meaning in the context of the present case is relevent and ought to be applied.*

67. Although, the job of the concerned workmen, may have some concern with the mining industry of the Tata Iron and Steel Co. Ltd.; but the industrial dispute raised by them, in my opinion, does not concerns 'a mine'.

68. Although, the word 'concerning" is a term of wide amplitude, but the same must be construed in a reasonable manner. So construed and avoiding the absurd consequences which may arise by giving a wide meaning and particularly in the light of the decision of the Supreme Court in Serajuddin's case it must be held that the words 'industrial dispute concerning a mine' must be construed in such a manner so as to refer to such industrial disputes which have got a proximate, intimate and real connection with the mining operation and not a connection which is far-fetched, remote and hypothetical.

69. If a wide interpretation of the word 'concerning' is placed, it w 11 lead to several absurd consequences; in such a situation anything an d everything which is even remotely connected with the affair of a mine; any mining industry as a whole will have to be brought within the purview of the Central Government, which obviously could not have been the intention of the Parliament.

> *In this connection the different phraseologies used in Section 2(a) of the Industrial Disputes Act, 1947 may be taken note of. Whereas the first part of the said provision refers to the industries; the second part refers to a mine and oil fields etc. In other words, the industrial dispute raised by the concerned workmen must be such so as to affect a mine or mining operations Garried therein.*

70. The Supreme Court in Serajuddin's case has also placed a narrow meaning of the words 'industrial dispute concerning a mine'.

71. The purported industrial dispute raised by the respondent No. 3, in my opinion, does not come within the purview of the words 'concerning a mine' and as such, the appropriate Government for referring such a dispute would be the State Government and not the Central Government."

32. The Bombay High Court in a decision in the case of ***Sylvester And Co. vs Their Workman Thro' Transport*** reported in ***(2008) I LLJ 546 Bom*** was considering a case of a dock clerk engaged with an employer carrying on business of a Clearing and Forwarding agent in respect of goods in the docks. Interpreting the definition and the term *"In relation to in industrial dispute concerning a major port"* the Bombay High Court observed that there has to be an existence of a nexus between the industrial dispute and the major port. If the nature of the dispute is such as to be a reasonable and rational relationship to a major port the element of nexus would be found to be present. Since the dispute raised was with regard to the retrenchment in the

Clearing and Forwarding department and the Godown department the activities of which, the court found, was work concerning a major port,the court held that the termination of the Dock Clerk was concerning a major port and therefore the central government was rightly the appropriate government The employer's objection that the central government was not the appropriate government was overruled.

"6. These submissions can now be considered:

Appropriate Government:

7. Section 2(a) of the Industrial Disputes Act, 1947 defines the expression "appropriate Government". In relation to those industrial disputes which fall within the purview of Sub-clause (i), the Central Government is the appropriate Government, while in relation to all other industrial disputes, Sub-clause (ii) provides that the State Government would be the appropriate Government. Sub-clause (i) of Clause (a) can, for convenience of exposition, be divided into several parts. The first part deals with an industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a Railway Company. The second part deals with an industrial dispute concerning any such controlled industry as may be specified in this behalf by the Central Government. The third part deals with industrial disputes concerning various other establishments which are specifically enunciated. For the purposes of the present case, the dispute between the Appellant and the

Respondent before this Court is confined to the following words of Section 2(a)(i), namely, "(a) appropriate Government means-

(i)...in relation to an industrial dispute concerning...a major port, the Central Government...." The expression "major port" is defined in Clause (la) of Section 2 to mean a major port as defined in Clause 8 of Section 3 of the Indian Ports Act, 1908. The expression "major port" is defined by the Indian Ports Act, 1908 to mean any port which the Central Government may by notification in the Official Gazette declare or may under any law for the time being in force have declared to be a major port.

8. The provisions of Section 2(a)(i) came up for interpretation before the Supreme Court in Serajuddin and Co. v. Their Workmen. In that case, the State of West Bengal referred a dispute to adjudication and a preliminary objection to the validity of the reference was raised on the ground that it was not the State Government but the Central Government which was the appropriate Government. The Tribunal overruled the objection against which a Special Leave Petition was filed before the Supreme Court. The Appellant carried on mining operations in the State of Orissa and the function of its office at Calcutta was to exercise general control over the mining operations and look after the sale of mineral products of the mine. The argument of the employer was that the Head Office of the Appellant at Calcutta was an integral part of the mine and any industrial dispute between the office and its employees was an industrial dispute concerning the mine under Section 2(a)(i) in which case the appropriate Government was not the State Government but the Central Government. The relevant words of Section 2(a)(i) which fell for interpretation were an 'industrial dispute concerning a mine'. The argument before the Supreme Court was that the

expression "industry" in Section 2(j) was wide enough to include the Head Office of a Mining Company though it may be situated away from the place where the mining operations are actually carried out and it is in the light of the definition of the word "industry" contained in Section 2(j) that the words "in relation to a mine" must be construed. The Supreme Court while rejecting the submission noted that where in Section 2(a)(i) it was intended to refer to an industry as such, the definition used the word "industry" as for instance where a reference is made to an industrial dispute concerning a controlled industry as specified by the Central Government. On the other hand, while referring an industrial dispute in regard to a mine, the definition did not refer to an industrial dispute concerning mining industry, but merely referred to an industrial dispute concerning a mine. The definition of the expression "mine" not having been made by the Act, the Court held that recourse would have to be taken to the dictionary meaning and to the definition in the Mines Act of 1952. The Supreme Court held that Section 2(j) of the Mines Act, 1952 defined a mine as an excavation wherein operation for the purposes of searching for or obtaining mineral ore is being carried on. The definition in Section 2(j) excluded an office of a mine which was separately defined by Section 2(k). Hence, the Supreme Court was of the view that the head office wherever it may be situated cannot be said to do mining operations within the meaning of the definition. Hence, a dispute between the employees engaged at the Head Office at Calcutta and the employer was not an industrial dispute concerning a mine.

9. The judgment of the Supreme Court in Serajuddin (supra) has been followed by the Supreme Court in Damodar Mangalji & Co. v. Regional Director. In that case, the appellant challenged a notification issued by the Government of Goa, Daman and Diu under the ESI Act, 1948

contending that the notification in its application to mining industry was beyond the scope of the Act for the reason that the appropriate Government in respect of a mine was the Central Government and not the State Government. The Supreme Court while rejecting the submission of the employer held as follows at p. 1122 of LLJ:

3...In Serajuddin & Co. case the dispute relating to the head office of a mining company was referred to the Industrial Tribunal by the West Bengal Government under the Industrial Disputes Act, 1947.

It was held that the West Bengal Government was the appropriate Government and the decision turned on the interpretation of Section 2(a)(i) of the I.D. Act which defines "the appropriate Government". The crucial words that fell for interpretation were "in relation to an industrial dispute concerning a banking or insurance company or mine or an oilfield or a major port". It was held that the word "mine" as used in Section 2(a)(i) of the I.D. Act referred to a mine as defined in the Mines Act and that a dispute with reference to the head office of the mine was not a dispute concerning a mine which must mean mine as defined under the Mines Act. Therefore, this Court, having interpreted the expression "the appropriate Government" in the Industrial Disputes Act in Serajuddin & Co. case which is identical with the expression "the appropriate Government" as defined under the Act, we think the view taken by the High Court is correct and calls for no interference....

10. The ambit of the expression "in relation to an industrial dispute concerning a major port" has fallen for consideration in several decided cases. Before dealing with those cases, it would merit emphasis that the relevant words used by the statute are that the industrial dispute should

concern a major port. The expression "concerning a major port" emphasises the existence of a nexus between the industrial dispute and the major port. What is of concern to a major port has to be defined with reference to the ambit of the operation of the major port. If the nature of the dispute is such as to bear a reasonable and rational relationship to a major port, the element of nexus would be found to be present.

11. In Tulsidas Khimji v. Jeejeebhoy 1961-I-LLJ-41, an industrial dispute was raised following the termination of the employment of certain workmen from the Clearing and Forwarding Department and Godown Department of a partnership firm. The firm carried on business as (1) clearing and shipping agents, (2) insurance agents, (3) godown keepers and (4) cotton supervisors and controllers. The reference which was made by the Central Government was sought to be impugned on the ground that the appropriate Government was not the Central Government. The judgment of the Division Bench of this Court noted that the contention urged before the Court was not taken before the Tribunal and could not be allowed to be entertained in writ proceedings, as a result. Moreover, the management had served a notice of the proposed retrenchment on the Central Government thereby accepting the position that the Central Government was the appropriate Government. Having regard to the peculiar circumstances, therefore, as they obtained in that case, the judgment in Tulsidas Khimji's case proceeded largely on the premise that the challenge to jurisdiction was not raised before the Tribunal and the management had in fact accepted that the appropriate Government was the Central Government. The Division Bench, however, did observe that in so far as the activities of the Godown Department were concerned, it was admitted that 25% of the space in the godown was utilised for storing goods for clearing and shipping.

In view of all these circumstances, the Court held that it could not be said that the activity of the godown department had no relation to a major port. The Division Bench consequently concluded thus:

Since the dispute raised is with regard to the retrenchment in the clearing and forwarding department and the godown department, the activities of which, as we have seen, can be said to be concerning a major port, it would come within the scope of Section 2(a). The Central Government, therefore, had authority to make the reference and the Central Government Industrial Tribunal had jurisdiction to deal with it.

12. The Andhra Pradesh High Court had occasion to consider the ambit of the expression "concerning a major port" in Continental Construction (P) Ltd. Visakapatnam v. Government of India 1977 Lab IC 1199. The appellant had entered into a contract with the Vashakhapatnam Port Trust for the: construction of Break-Waters and Jetties, in connection with the construction of the outer harbour at Vishakhapatnam. A dispute having arisen between the employer and its workmen, it was referred for adjudication by the Central Government. Mr. Justice O. Chinnappa Reddy (as the Learned Judge then was), rejected a Writ Petition filed by the employer challenging the maintainability of the reference on the ground that the Central Government could not have-made the reference. Mr. Justice Jeevan Reddy (as the Learned Judge then was) speaking for the Division Bench in appeal, took note of the width of the expression "concerning" which is defined in the Webster's Third New International Dictionary as "relating to, regarding, respecting, about". The Court noted that the expression "concerning" is a word of wide amplitude and, prima facie, any industrial dispute affecting or connected with a major port' would fall within the said definition.

That was the submission of the Central Government. The Division Bench held thus:

We are, however, of the opinion that the word 'concerning' must be construed in a reasonable manner, and referring to such industrial disputes which have got a proximate, intimate and real connection with the Corporations or authorities; mentioned in the said definition, and not a connection which is far fetched, remote and hypothetical.

On facts, the Division Bench held that the industrial dispute between the appellant and its workmen was closely connected with the major port. The appellant was engaged in the construction of Break-waters and Jetties in connection with the outer harbour, at the Vishakhapatnam port and any dispute between the appellant and its workmen was likely to affect the progress of the said work and would directly affect the Port. Mr. Justice Jeevan Reddy noted that the second part of the definition in Section 2(a)(i) did not stipulate that the industrial dispute must concern the business of a major port. So long as there was an industrial dispute concerning a major port, and not necessarily the business of such major port, the second part of the definition is satisfied.

13. In a judgment of Mr. Justice Chittatosh Mookerjee (as the Learned Chief Justice then was) in Radha Shyam Bagaria v. Union of India 1980-I-LLJ-249 the Calcutta High Court had occasion to consider a similar issue and the question as to whether the industrial dispute was one concerning a major port. While adverting to the judgment of the Supreme Court in the case of Serajuddin (supra), the Calcutta High Court noted that the Industrial Disputes Act, 1947 did not define the ambit of the expression "mine" as a result of which, the Supreme Court held that a reference

would have to be made to the content of that expression in the Mines Act, 1952. On the other hand, the expression "major port" was defined by the Industrial Disputes Act, 1947 to have the same meaning as in Section 3 of the Indian Ports Act, 1908. Mr. Justice Chittatosh Mookerjee held thus:

The intention of the Legislature appears to make the Central Government the appropriate Government in relation to industrial disputes concerning works in major ports. In the absence of elaboration in the Industrial Disputes Act, the Central Government would be an appropriate Government to make a reference under Section 10 of the Act when the dispute is between the Management and the workers employed in works considered as incidental to or connected with operations in a major port. The Court is bound to examine the facts of each particular industrial dispute and determine the question whether in relation to the same the Central Government or the State Government would be the appropriate Government. Therefore, to put in another way in order to determine whether a particular dispute is concerning a major port, the real test would be the nature of the works or activity of the industry concerned employing the workmen in question. Insofar as this Court is concerned, there are two judgments of Learned single Judges which define the ambit of the expression "concerning a major port". In Transport and Dock Workers' Union v. Khemka Co., (Agencies) Pvt. Ltd. 1999 (1) CLR 678 Mr. Justice A.P. Shah dealt with a case where the employer was carrying on the business of a shipping agency for several years and the entire business of the Company was concerned solely and exclusively with this business in the Port of Bombay. A settlement was entered into-between the management and the workmen before the Assistant Labour Commissioner (Central). The Central Government was held to be the appropriate Government under Section 2(a). A

similar view was taken in a judgment of-the Learned single Judge in Oyster Marine Inc. v. Chandrakant R. Ugale 2001 (3) CLR 873. While interpreting the word "concerning" in the context of Section 2(a), a Learned single Judge of the Rajasthan High Court has held in State Farms Corporation of India Ltd. v. Rajendra Taneja 1984 (48) FLR 25, that the word must be construed in a reasonable manner and signifies the existence of a proximate, intimate and real connection with the establishments or' authorities mentioned in the definition and not a connection which is far fetched, remote and hypothetical. Therefore, in every case, it would be a question of fact to be determined on the facts whether an industrial dispute is one,' concerning any of the corporations or authorities mentioned in the definition.

14. Now, insofar as the evidence in the present case is concerned, it is an undisputed; position that the workman was designated as a Docks Clerk in the establishment of the employer who was carrying on business of a clearing and forwarding agent in respect of goods in the Docks. The order of termination dated June 27,1986 refers to the workman as a Dock Clerk and expressly refers to various acts of commission and omission on the part of the workman while discharging his duties as a dock worker. This includes withholding of wages, showing the engagement of extra labour, delayed payment of wharfage and effecting delivery, claiming excess delivery charges, misbehaviour with the Foreman of Stevedores, failure to register containers thereby incurring demuhrrage, neglect in tracing containers and failure to submit accounts relating to the grounding of containers. The items of omission and commission which are adverted to in the letter of termination clearly demonstrate that as a Dock Clerk, the work which was being done by the workman had a real proximate and intimate connection with a major port.

15. The Industrial Tribunal noted in the course of its Part-I award that the workman had deposed on affidavit about the business activities of the employer which were being carried on in the Port of Mumbai and that the workman used to perform his duties in the port. The Tribunal noted that this statement made by the workman has gone unchallenged in the course of cross-examination and no oral evidence by way of rebuttal was led on behalf of the management. In fact, the case of the management itself in the written submissions was that the worker was required to visit the Docks on occasion for completing a particular job including the work of clearing and forwarding. The Union produced copies of settlements entered into with the employer in the presence of the Central Assistant Labour Commissioner. Having regard to the evidentiary material on record, the Learned single Judge, in our view, was justified in confirming the conclusion that was arrived at by the Industrial Tribunal.

16. The judgment of the Division Bench in Irkar Shahu v. Bombay Port Trust 1994 (I) CLR 1987, upon which reliance has been placed by the Appellant has no relevance to the issues in the present case. The judgment lays down that the Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 can also cover those workers employed in the Docks in connection with loading and unloading so long as such workers are not covered by any of the schemes framed under the Dock Workers Act, 1948."

33. What is therefore evident from the case law discussed hereinabove is that it when a dispute is raised by employees working in a mine or an office

of the mine or ones employed in a mine what needs to be decided is whether in relation to the industrial dispute is it concerning a mine. In order to answer that question an enquiry will have to be made by the competent authority as to the concerned employees in as much as whether the work they are carrying out or the nature of duties they are performing are concerned with the mine or have a direct nexus or a proximate relationship to the activity of the mine. Merely because such workmen or employees are working in the "office of the mine" which may be on the surface of the mine by itself may not be a conclusive factor. What needs to be seen is the nature of work and the proximity and intimate relation to the mining operations. The issue has to be considered in light of the decisions referred to hereinabove.

34. Perusal of the impugned communication dated 26.07.2018 does not reflect consideration of these issues in connection with the nature of work carried out by the Petitioners. The only fact that they are

working at Gadhsisa mines would not be the only factor to consider in coming to the conclusion with regard to the interpretation of the term “appropriate government”.

35. Accordingly the communication dated 26.07.2018 deserves to be quashed and set aside. The Respondent No.3 is directed to take a fresh decision on the issue in light of the decisions referred to hereinabove after examining the issues in light of such decisions. The fresh decision shall be so taken after hearing the concerned parties within eight weeks from the date of receipt of this Order.

(BIREN VAISHNAV, J)

ANKIT SHAH