VERDICTUM.IN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9956 OF 2023

1. Tata Memorial Centre
2. The Director, Tata Memorial Centre
3. The Chief Administrative Officer,
Tata Memorial Centre } ..PETITIONERS

V/s.

1. Tata Memorial Hospital Workers Union
Tata Memorial Hospital
2. The Hon'ble Member, Industrial Court } ..RESPONDENTS

WITH

WRIT PETITION NO. 9960 OF 2023

1. Tata Memorial Centre
2. Mr. G.S. Dhanoa, Chief Engineer,
Tata Memorial Centre } ..PETITIONERS

V/S.

1. Tata Memorial Hospital Workers Union
Tata Memorial Hospital
2. The Hon'ble Member, Industrial Court.
3. Mr. P.K. Sukumaran, H.R.D. Officer,
Tata Memorial Centre } ...RESPONDENTS

WITH

WRIT PETITION NO. 9961 OF 2023

WITH

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WRIT PETITION NO. 9962 OF 2023

1. Tata Memorial Centre

2. Dr. Rajan Badwe, The Director

Tata Memorial Centre } ..PETITIONERS

V/S.

1. Tata Memorial Hospital Workers

Union, Tata Memorial Hospital

2. The Hon'ble Member, Industrial Court

3. Dr. Venkata V.P.R.P. Chief Administrative

Officer, Tata Memorial Centre } ..RESPONDENTS

Mr. Sudhir Talsania, Senior Advocate with Mr. Agnes Careneiro and Mr. Vaibhav Shah i/by. Mulla & Mulla & Craigie Blunt & Caroe, for the Petitioners.

Mr. Ashok D. Shetty with Mr. Shailesh K. More and Ms. Rita Kirit Joshi for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 5 March 2024.

Judgment Pron. On : 20 March 2024.

JUDGMENT :

1) **Rule.** Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for hearing.

A. The Challenge

2) These four petitions are filed by Tata Memorial Centre challenging the decisions of the Industrial Court holding that the

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appropriate government for the Petitioner is the State Government. Petitioner questions the said findings recorded by the Industrial Court and contends that being an autonomous body, owned and controlled by the Central Government, the appropriate government for it is the Central Government.

3) The issue arises in the light of challenge raised by the Petitioner to the Judgment and Order dated 12 February 2022 passed by the Industrial Court, Mumbai allowing the Revision filed by the Tata Memorial Hospital Workers Union setting aside the Judgment and Order dated 18 March 2021 passed by the Labour Court, Mumbai in Complaint (ULP) No. 99 of 2008. The Labour Court had held that the complaint filed by the Workers Union challenging the termination of its active Secretary, Mr. M.B. Chavan under Sections 28 and 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) to be not maintainable since the appropriate Government for the Petitioner-hospital is the Central Government. The said decision of the Labour Court has been reversed by the Industrial Court holding the complaint is maintainable as the appropriate government is the State Government. Similarly, Writ Petition No. 9961 of 2023, 9962 of 2023 and 9960 of 2023 involve challenge to various decisions by the Industrial Court, in which complaints were directly filed by the Workers Union under Section 28 of the MRTU & PULP Act under Item Nos. 3, 9 and 10 of Schedule-IV. Those complaints were resisted by the Petitioner by raising preliminary objection to maintainability of the complaints on the ground that the appropriate Government is the Central Government and in-applicability of the provisions of the MRTU & PULP Act to the

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Petitioner-hospital. The Industrial Court has rejected Petitioner's objection and held that the appropriate government is the Central Government, and the complaints are maintainable. Petitioner seeks to challenge those orders passed by the Industrial Court in Writ Petition No. 9961 of 2023, 9962 of 2023 and 9960 of 2023.

B. Factual Matrix

4) Before recording facts in individual petitions, it would be necessary to consider a brief history of establishment of Tata Memorial Centre.

B. 1 History of establishment of Tata Memorial Centre

5) Tata Memorial Hospital was initially set up by the Trustees of a public charitable trust known as 'Sir Dorabjee Tata Trust' in the year 1940. The Hospital was set up with the objective of treatment and cure of cancer and allied diseases. After independence, the Government of India was desirous of establishing an Indian Cancer Research Centre for postgraduate teaching and research in cancer and accordingly it entered into an agreement with Sir Dorabjee Tata Trust on 7 October 1953, under which the Government of India gave initial grant for setting up a Laboratory on the land belonging to the Trust and also undertook to provide recurring expenditure in respect of the salaries of the staff etc. The Trustees of Sir Dorabjee Tata Trust subsequently decided to dedicate the hospital to the Nation, with all its assets including its funds and the plots of land and requested the Government of India to take over its control and management w.e.f. 4 February 1957. An Agreement was entered into between the Trustees and Central Government on 4 February 1957, under which

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Management of the Hospital was to vest with the Governing Council consisting of seven members of the Board, three of them to be nominated by the Government of India and three by the Trust. The Superintendent of the Hospital was to be ex-officio seventh member of the Governing Council. The administrative control of the Tata Memorial Hospital and Indian Cancer and Research Centre was thereafter transferred to the Government of India. The Centre first came under the control of Ministry of Health and thereafter under the Department of Atomic Energy w.e.f. 1 February 1962.

6) Subsequently, an agreement was executed between the Government of India and the Trustees of Sir Dorabjee Tata Trust on 6 January 1966, under which the two institutions namely, Tata Memorial Hospital and Indian Cancer Research Centre were amalgamated into an institution named as Tata Memorial Centre (**TMC**), which was registered as a Society under the provisions of the Societies Registration Act, 1860 and also as a public trust under the provisions of the Bombay Public Trusts Act, 1950. Under the Rules and Regulations of the Society, the administration and management of the Centre vests in the Governing Council, which consists of four members appointed by the Government of India, three members appointed by the trustees of Sir Dorabjee Trust and ex-officio director of the Centre.

7) The issue whether the 'appropriate government' for Tata Memorial Centre, at the relevant time, was the Central Government or the State Government attracted attention of the Apex Court in **Tata Memorial Hospital Workers Union V/s. Tata Memorial Centre and Anr.** (2010) 8 SCC 480. The Apex Court interpreted the definition of the term 'appropriate Government' under Section 2(a) of the Industrial Disputes Act, 1947 as it stood then and held that the Petitioner-Tata

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Memorial Centre is not an industry carried out by or under the authority of the State Government and that therefore the Central Government is the appropriate authority *qua* the petitioner. The judgment of the Apex Court was delivered on 9 August 2010.

8) Shortly after delivery of judgment of the Apex Court in **Tata Memorial Hospital Workers Union** (supra) on 9 August 2010, definition of the term 'appropriate government' came to be amended by the Industrial Disputes Amendment Act, 2010 w.e.f. 15 September 2010. By the amendment, in addition to several other changes in the definition, the words '*autonomous bodies owned or controlled by the Central Government*' came to be inserted in definition of the term 'appropriate government' under Section 2(a) of the Industrial Disputes Act.

9) It would be necessary to make a quick reference to facts involved in each of the petitions.

B. 2 Facts in Writ Petition No. 9956 of 2023 :

10) Tata Memorial Hospital Workers Union filed Complaint (ULP) No. 99 of 2008 before the Labour Court, Mumbai under the provisions of Sections 28 and 30 read with Items 1(a), (b), (c), (d), (e), (f) and (g) of Schedule-IV of the MRTU & PULP Act seeking the relief of reinstatement with full backwages on account of its termination of its active Secretary, Mr. M.B. Chavan w.e.f. 31 December 2007. Services of Mr. M.B. Chavan were terminated by the Petitioner-Hospital after holding disciplinary enquiry. In addition to defending the complaint on merits, the Petitioner-Hospital filed an application at Exhibit-C-10

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on 6 March 2012 for framing of a preliminary issue in respect of the appropriate government for the Petitioner-Centre. By Order dated 30 September 2012, the Labour Court framed the preliminary issue in respect of the appropriate Government and by Order dated 8 May 2015, the Labour Court held that the appropriate government in respect of the Petitioner-hospital is the State Government. Aggrieved by the said decision of the Labour Court, the Petitioner-hospital filed Writ Petition No. 2523 of 2015 before this Court. By order dated 16 January 2017, this Court remanded the issue for fresh decision by the Labour Court by granting opportunity to both the parties to lead additional evidence. The complainant-Union examined a witness and also filed several documents. Similarly, the Petitioner-Hospital also examined two witnesses and relied upon several documents. After hearing both the parties, the Labour Court passed Order dated 18 March 2021 upholding the preliminary objection raised by the Petitioner-hospital and held that the 'appropriate government' for it is the Central Government. The complaint was held to be not maintainable and was disposed of.

11) The Workers Union filed Review Petition before the Labour Court, which came to be rejected by detailed order dated 6 July 2021. The Workers Union thereafter filed Revision Application (ULP) No. 38 of 2021 before the Industrial Court. By its Judgment and Order dated 16 February 2022, the Industrial Court has allowed the Revision and rejected the preliminary objection filed by the Petitioner holding that the appropriate government for Petitioner is the State Government. The decision of the Labour Court has been set aside and the complaint is remanded to the Labour Court for decision on merits. Petitioner is aggrieved by the Judgment and Order dated 16 February 2022 passed by the Industrial Court and has filed Writ Petition No. 9956 of 2023.

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B. 3 Facts in Writ Petition Nos. 9961 of 2023, 9962 of 2023 and 9960 of 2023 :

12) These petitions arise out of Complaint (ULP) Nos. 388 of 2014, 128 of 2015 and 318 of 2015 filed by Tata Memorial Hospital Workers Union under Items No.3, 9 and 10 of Schedule-IV of the MRTU & PULP Act, 1971 alleging unfair labour practices on the part of the Petitioner-Hospital. The exact details of the grievances raised in these three complaints are not discernible from the documents placed on record, and at the same time, considering the narrow controversy involved in the petitions, it is not necessary to narrate the exact grievance of the Workers-Union in the said three complaints. Petitioner-Hospital raised preliminary objection about maintainability of these three complaints contending that in the light of the amended definition of the term 'appropriate government' under Section 2(a)(i) of the I.D. Act, the appropriate Government for the Petitioner-hospital is the Central Government. The Labour Court proceeded to pass separate orders on 13 February 2019 dismissing complaints for want of jurisdiction holding that the appropriate government for the Petitioner-hospital is the Central Government. The Workers Union challenged the Orders passed by the Labour Court on 13 February 2019 by filing Writ Petitions No. 12515 of 2019, (Lodg.) No. 9935 of 2019 and 8953 of 2019. All the three petitions came to be disposed of by this Court by Order dated 16 December 2019 setting aside the Orders passed by the Industrial Court on 13 February 2019 and remanding the three complaints for fresh hearing to the Industrial Court. Upon remand, the Industrial Court has passed Order dated 12 February 2022 in all the three complaints holding that the appropriate government for Petitioner-Hospital is the State Government and that

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therefore the complaints filed by the Workers Union are maintainable. Petitioners are aggrieved by the Order dated 12 February 2022 passed by the Industrial Court and has filed Writ Petition Nos. 9961 of 2023, 9962 of 2023 and 9960 of 2023.

C. Submissions

13) Mr. Talsania, the learned senior advocate appearing for the Petitioner in all the four petitions would submit that the impugned decisions of the Industrial Court holding that the appropriate government *qua* Petitioner-hospital is the State Government are in the teeth of the definition of the term 'appropriate government' under Section 2(a) of the Industrial Disputes Act. He would submit that the said definition has undergone a change on account of amendment effected w.e.f. 15 September 2010, whereby in respect of every autonomous body, which is owned or controlled by the Central Government, the appropriate government is the Central Government. He would submit that under the unamended definition prior to 15 September 2010, only in respect of an industry carried on by or under the authority of the central government, it was the appropriate government in respect of that industry. Now under the amended definition, it is not necessary for the Petitioner to prove that it functions by or under the authority of the Central Government. That Tata Memorial Hospital is an autonomous body controlled by the Central Government. That the judgment of the Apex Court in ***Tata Memorial Hospital Workers Union*** will have no application for deciding the issue of appropriate government *qua* Petitioner in the light of amended definition of the term 'appropriate government' after the Apex Court's judgment.

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14) Mr. Talsania would take me through the evidence on record to demonstrate as to how Tata Memorial Hospital is an autonomous body controlled by the Central Government. Inviting my attention to the deposition of Smt. Bharati S. Rai, Under Secretary in the Department of Atomic Energy (**DAE**), he would submit that the official of the Ministry herself deposed before the Labour Court that Tata Memorial Hospital is fully funded and aided by the DAE, Government of India and is also under the administrative control thereof. That the accounts of the Centre are audited by the internal accounts unit of the DAE as well as by the Comptroller and Auditor General of India through the Indian Audit and Accounts Department. He would submit that once the Governing Official deposed before the Labour Court that Tata Memorial Hospital is under the administrative control of the Govt of India, it was not necessary for the Petitioner to produce any further evidence to prove the said contention. Relying on the Office Memorandum dated 14 March 2000 issued by the DAE, Mr. Talsania would submit that the Governing Council of Tata Memorial Hospital consists of three ex-officio members of the Government of India, including the Chairman, in addition to two members nominated by it. That all members of the Governing Council are appointed by the Govt. of India except the two trustees of Sir Dorabjee Tata Trust. He would take me through series of documents to prove deep and persuasive control of the DAE on the affairs of Tata Memorial Hospital. That by Office Memorandum dated 26 July 1988, the Central Government applied the pension scheme under the Civil Services (Pension) Rules to the employees and officers of the TMC. That by the Office Memorandum dated 6 February 2017, the DAE applied the provisions of 7th Pay Commission to the staff members of TMC. That for even a minuscule matter such as replacement of a bus, the Centre is

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required to take approval from DAE. He would submit that the Petitioners proved before the Labour Court that it is an autonomous body controlled by the Central Government and that the Industrial Court has erroneously reversed the decision of the Labour Court. That in rest of the three petitions, the Industrial Court has erroneously held that the appropriate government for Petitioners is the State Government. That the findings recorded by the Industrial Court suffers from the vice of perversity and are liable to be set aside. That the Industrial Court has erroneously gone into the issue of 'controlled industry', which is totally irrelevant for the purpose of deciding whether Tata Memorial Centre is an autonomous body controlled by the Central Government or not. That the provisions of Section 14 of the Administrative Tribunals Act have been erroneously applied in the present case, which has no relevance for deciding the issue. He would therefore pray for setting aside the decisions of the Industrial Court in all the four petitions.

15) *Per-contra,* Mr. Shetty the learned counsel appearing for Respondent-Workers Union in all the four petitions would support the orders passed by the Industrial Court. He would submit that the judgment of the Apex Court in ***Tata Memorial Hospital Workers Union*** conclusively decides the issue at hand. That the amendment of the definition of the term 'appropriate government' after the judgment of the Apex Court has not changed the fact that Petitioner is not controlled by the Central Government. That the Apex Court has also gone into the issue of control and management of the hospital by the Central Government and has ruled that it is neither controlled nor managed by the Central Government. That therefore the amendment of the term 'appropriate government' is inconsequential, and the issue already stands decided by the judgment of the Apex Court.

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16) Mr. Shetty would invite my attention to the orders dated 26 October 2016 passed in Writ Petition No. 2523 of 2015 and submits that Petitioners cannot be permitted to argue the issue of 'control by the Central Government'. That Petitioners argued before this Court on 26 October 2015 that the issue of 'control by the Central Government' is already decided by the Apex Court and the only issue that remains to be decided is whether the Petitioner is 'owned' by the Central Government. That therefore Petitioners cannot now be permitted to re-agitate the issue of control and the ambit of enquiry in the present petition will have to be restricted only to the issue of 'ownership' of Petitioner by the Central Government.

17) Mr. Shetty would further submit that Petitioner No.1 is a society registered under the provisions of the Societies Registration Act, 1860. That all the properties of the Defendant No.1 vest in the Governing Council. Petitioner is fully run and managed by the Governing Council. That Central Government has no role to play into the day-to-day affairs of the Society and all decisions in that regard are taken by the Governing Council.

18) Mr. Shetty would take me through the cross-examination of the witnesses examined on behalf of Petitioners to demonstrate that they have given admissions about non-interference by the Central Government into the day-to-day affairs of Petitioner No.1. He would take me through the bye-laws of Tata Memorial Centre to demonstrate as to how the Governing Council is empowered to take decisions in respect of every matter such as appointment and service conditions of staff, appointment of Directors, audit of accounts etc. That the Governing Council of the Centre is the final authority to take all

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decisions concerning the operation and management of the Hospital. That the Centre has its own source of income as per the admissions given by Petitioner's witnesses and that therefore it cannot be stated that the Centre is funded only by the Central Government. The pension of Group-D employees of the Centre is paid as per the pension scheme in vogue as per the pension scheme of the Municipal Corporation of Greater Mumbai and not of the Central Government. That all the documents which are now relied upon by the Petitioner are already before the Apex Court and after considering the documents, the Apex Court has held that Tata Memorial Centre is not under the control of the Central Government. Lastly, Mr. Shetty would submit that the concerned employees are suffering for a considerable period of time on account of technical objections raised by Petitioners. He would therefore submit that the complaints filed by the Workers Union before the Labour/Industrial Court must be permitted to be decided on merits by repelling the technical objections repeatedly raised by the Petitioners. He would pray for dismissal of the petition.

D. Reasons & Analysis

19) The issue of appropriate government for Tata Memorial Centre, which was decided by the Apex Court in ***Tata Memorial Hospital Workers Union,*** has once again attracted attention of this Court on account of change in definition of the term 'appropriate government' under Section 2(a)(i) of the Industrial Disputes Act. To understand the exact change bought in by the 2010 amendment to the Industrial Disputes Act, it would be necessary to compare the definitions of the term "appropriate government" before and after the 2010 amendment.

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DEFINITION BEFORE 2010 AMENDMENT	DEFINITION AFTER 2010 AMENDMENT
(a) "appropriate Government" means — (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [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), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [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	(a) "appropriate Government" means — (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [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 3A 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), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [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

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established under section 3 of the Unit Trust of India Act, 1963 (52 of 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 [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 [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company], a mine, an oilfield] [, a Cantonment Board,] or a [major port, the Central Government, and (ii) in relation to any other industrial dispute, the State Government.	established under section 3 of the Unit Trust of India Act, 1963 (52 of 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 [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 [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company], a mine, an oilfield] [, a Cantonment Board,] or a [major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and] [(ii) in relation to any other industrial dispute, including 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,

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	which has control over such industrial establishment;]

20) Before the Apex Court in ***Tata Memorial Hospital Workers Union,*** the scope of enquiry was whether the TMC was an industry carried on '*by or under the authority of the Central Government*'. The Apex Court relied upon its judgment in **Heavy Engg. Mazdoor Union Vs. State of Bihar** 1969 1 SCC 765 and held in paras-29, 30, 31 as under:

> 29. It was accepted by the corporation that it could not be said to be an "industry" carried on by the Central Government. The limited issue was whether it could be regarded as an "industry", carried on *under the authority* of the Central Government. The question was as to how to construe the phrase "under the authority of Central Government". This court held: (*Heavy Engg. Mazdoor Union case,* SCC pp.768-69, para4)
>
> > "4….There being nothing in Section 2 (a) to the contrary, the word 'authority' must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to another to do an act. A person is said to be authorized or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act. For instance, if A authorizes B to sell certain goods for and on his behalf and B does so, incurs no liability for so doing in respect of such goods and confers good title on the purchaser. There clearly arises in such a case the relationship of a principal and an agent. *The words "under the authority of" means pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master.* Can the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government? That obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association."
>
> 30. This Court noted in *Heavy Engg. Mazdoor Union case* that an incorporated company has a separate existence and the law recognizes it as a juristic person, separate and distinct from its members. Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company so incorporated derives its powers and functions from and by virtue its memorandum of association and its articles of association. The mere fact that the entire share capital of the company was contributed by the Central Government and the

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fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The court noted that a notice to the President of India and the officers of the Central Government, who hold between them all the shares of the company would not be a notice to the company nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

31. The Court noted that the extensive powers are conferred on the Central Government including the power to give directions as to how the company should function, the power to appoint its Director and even the power to determine the wages and salaries payable by the company to its employees but these powers were derived by the company's memorandum of association and the articles of association and not by reason of the company being an agent of the Central Government. The court thereafter observed as follows:(*Heavy Engg. Mazdoor Union case,* SCC p.770, para 5)

> "5….. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the state as in *Graham vs. Public Works Commissioners* [1901] 2 K.B. 781(DC) where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. *The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government.* (See *State Trading Corporn. of India Ltd v. The CTO,* AIR at p.1849:SCR at p.188, and *Tamlin v. Hannaford* KB at p. 25, 26). Such an interference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and non commercial functions. (Cf. *London County Territorial and Auxiliary forces Association v. Nichlos*.)

21) The Apex Court thereafter proceeded to decide the two issues viz. (i) how was the property of Tata Memorial Hospital vested and (ii) whether the control and management of the Hospital and the Research Centre was independently with the TMC. So far as the issue

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of vesting of the property is concerned, the Apex Court held that the property dedicated to TMC would be deemed to be vested in its Governing Council.

22) Mr. Shetty has strenuously relied upon the observations made by the Apex Court in support of his contention that the issue of control or management of Tata Memorial Hospital by the Central Government is exclusively decided by the Apex Court. In paras-73 to 78 the Apex Court has held as under :

> **Whether the Control and Management of the Hospital and the Research Centre is independently with the first respondent?**
>
> 73. As far as the control and management are concerned, it is clear from the facts referred to above that the Central Government has the power to appoint four nominees on the Governing Council of the first respondent. We have already seen, as held in *Heavy Engg. Mazdoor Union Case*, mere power to appoint the Directors does not warrant a conclusion that the particular undertaking is a Central Government Undertaking. The question is whether the undertaking is functioning as the agent of the Central Government. In the instant case, the society was created to entrust the control and management of the Hospital and the Research Centre to the Society. Recital No.9 of the agreement of the 1966 specifically states as follows:
>
> > "9) AND WHEREAS the Government of India and the Trustees of the Sir Dorabji Tata Trust are now desirous of amalgamating the two institutions and entrusting their control and management to a society."
>
> 74. Consequently, Rule – 3 of the Society, which has been referred to earlier, also lays down that the administration and the management vests in the Governing Council. It is also to be noted that as per Rules and Regulation Nos.3 and 4 which have been quoted earlier, the administration and management of the Centre is vested in the Council which is declared to be an executive body of the centre. As per the foreword to the bye-laws of the Tata Memorial Centre:
>
> > "the final decision on the extent of applicability of these rules to all Tata Memorial Centre employees rests with the Tata Memorial Governing Council. Its decision on the interpretation of these rules adopted for Tata Memorial Centre employees will be final".
>
> Thus, as per the Rules and Regulations, the entire administration and management of Tata Memorial Centre is with the Governing Council.
>
> 75. It has clearly come in the evidence of Mr.Muthusamy, the Chief Administrative Officer of the first respondent that there was no interference

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of the Central Government in the day to day activities of the first respondent. The decisions were taken by the directors of the first respondent itself. As can be seen from the bye-laws of the first respondent, the appointments and the service conditions were modelled on the pattern of Department of Atomic Energy, but the pay, allowances and pension, etc. are on the pattern of the Mumbai Municipal Corporation, and which are fixed by the decisions of the Governing Council of the first respondent. The material and the evidence as referred to above clearly show that the entrustment of the management and control of the Hospital and the Research Centre to the Society was complete and it has been so functioning thereafter.

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

77. It was then submitted that mentioning of the Tata Memorial Centre in the Rules for Allocation of Business of Government of India is a pointer to the control of the Central Government. Insofar as the Rules of business of the Government of India are concerned, they are for the purpose of allocation of business between various departments of Government of India whenever the Government of India has to take a decision. As rightly held by a Division Bench of Bombay High Court in their own case in *Tata Memorial Centre Vs. Dr. Sanjay Sharma* mere allocation of business under any department would not in any manner decide the issue as raised in the present case as to whether a particular industry is under the control of the Central Government. The business rules cannot be conclusive to show that any institution or organization listed under the allocation of business, would be part of any department of the Government of India. Besides, as noted in *Heavy Engg. Mazdoor Union* even if a Minister appoints the directors, gives directions, calls information or supervises business, that will not make the industry an agent of the Government.

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

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23) In my view, the observations made by the Apex Court on the issue of control and management must be understood in the context in which the same were made. The Apex Court was deciding the issue as to whether Tata Memorial Hospital is an industry carried on by or under the authority of the Central Government. The finding on the issues of control and management are therefore required to be considered in the light of the issue that was taken up for determination by the Apex Court. The Apex Court was not deciding the issue as to whether Tata Memorial Hospital is an autonomous body owned or controlled by the Central Government. This is because, as on the date of delivery of the judgment on 9 August 2010, the definition of the term 'appropriate government' was not amended and the expression 'autonomous bodies owned or controlled by the Central Government' came to be inserted by the Amendment effected from 15 September 2010. Thus, it is clear that the Apex Court did not have any occasion to decide whether Tata Memorial Hospital is an autonomous body owned and controlled by the Central Government.

24) The findings recorded by the Apex Court in para-78 of the ***Tata Memorial Hospital Workers Union*** would make the above position even clearer. The Apex Court, while deciding the issue as to whether TMC was an industry carried on by or under the authority of the Central Government, thought it necessary to decide whether it is "under" the control of the Central Government. Thus, the findings recorded by the Apex Court in paras-73 to 78 of the judgment are about enquiry into the question whether TMC was 'under' the control of the Central Government, the Apex Court held that TMC was not 'under the control' of the Central Government.

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25) In my view, the expressions 'under the control of the Central Government' and 'controlled by Central Government' are altogether different concepts. The expression "under the control' would connote absolute control by the Central Government whereas 'controlled by' would mean some control by the Central Government. The words "controlled by" will have to be read in conjunction with the word 'autonomous bodies'. The very fact that the bodies are 'autonomous', shows that they are for all purposes autonomous but to some extent, they are controlled by the Central Government. For all other purposes, they are autonomous and free from absolute control. They are entitled to take their own decisions in several areas. However, they are still controlled by the Central Government despite being autonomous.

26) Having achieved clarity on the aspect of extent of control by the Central Government for the purpose of determination of the issue of appropriate government, it would be necessary to examine whether the Petitioner made out case before the Labour/Industrial Court about exercise of control by the Central Government.

27) Smt. Bharti Pai, Under Secretary to the Government of India in the DAE led evidence and stated as under:

> 2. I say that the Respondent No.1 i.e. the Tata Memorial Centre is fully funded and aided by the Department of Atomic Energy, Government of India and is also under the administrative control of the Department of Atomic Energy, Government of India. I say that in view of athe above the account of the Respondent No.1 Centre are audited by the Internal Inspection Wing of the Department of Atomic Energy and the Comptroller and Auditor General through the Indian Audit and Accounts Department, Office of the Principal Director, of Audit, Scientific Department.
>
> 4. I thus say that the Respondent No.1 Centre is an autonomous body owned and controlled by the Department of Atomic Energy, Government of India. I therefore say that it is evident from the aforesaid records of the

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Department of Atomic Energy that the appropriate government in the case of Respondent No.1 Centre is Central Government and not the State Government by virtue of amendment of Section 2(a)(i) of Industrial Disputes Act, 1947.

28) Thus an officer of the Central Government led evidence before the Industrial Court that the Central Government exercises administrative control over the Tata Memorial Hospital. In addition to the evidence of Smt. Bharti Pai, the Petitioners produced several documents before the Labour Court:

(i) Certificate dated 6 March 2000 issued by Under Secretary, DAE, GOI stated that TMC is fully funded by the DAE and of the expenditure incurred on procurement of equipment are met from the grants sanctioned by the Department.

(ii) Certificate dated 11/14 September 2018 issued by the Under Secretary, DAE, GOI stating that TMC is fully funded and aided institute under the administrative control of the DAE, GOI and that the accounts of the Centre are audited by the Internal Inspection Wing of the DAE and by the Comptroller and Auditor General of India.

(iii) Copy of letter dated 26 July 1988 of Under Secretary to GOI, DAE written to the Financial Advisor and Chief Administrative Officer, TMC conveyed approval of the President of India to the extension of pension scheme under the CCS (Pension) Rules to the employees of TMC, other than Group-D (Labour) and for extension of pension rules as applicable to employees of MCGM to Group-D Employees subject to various conditions. One of the conditions specified in the letter dated 26 July 1988 is that the total amount of employer's contribution with accumulated interest as on the

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date, was to be credited to the Government account or to be adjusted from grant-in-aid to be released to the Centre. Thus, it was the President of India who decided what pension scheme will apply to the staff members of TMC. The President decided that for employees other than Group-D, CCS Pension Rules will apply whereas for Group-D staff, pension scheme of MCGM would apply. The decision relating to applicability of the pension scheme was thus taken by the President of India. Another important factor is that applicability of the pension scheme was made subject to TMC depositing in the Central Government account, the total amount of employer's contribution with accumulated interest. Thus, the entire contribution made by TMC in the Provident Fund Accounts of the employees was deposited by it with the Central Government.

(iv) The letter dated 6 February 2017 by which the DAE took decision to extend the recommendations of 7th Pay Commission to the autonomous institutes under the administrative control of the department. The said letter dated 6 February 2017 was addressed to the Director of TMC making it clear that TMC is under the administrative control of the DAE. Thus, what should be the salary payable to the employees of TMC was decided by the Central Government.

(v) By OM dated 9 November 2015, the Department of Personnel and Training of GOI decided to discontinue the interviews for various junior level posts and the said OM was forwarded by DAE to all autonomous institutes including TMC for implementation. Thus, the manner in which the

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junior level posts were to be filled in TMC was decided by the GOI.

(vi) Notice dated 4 August 1988 issued by the Financial Advisor and Chief Administrative Officer, TMC implementing the pension scheme as per the approval of the President of India conveyed by the Under Secretary, DAE vide letter dated 26 July 1988. The Notice clearly states that "*the Department of Atomic Energy **has sanctioned** introduction of pension scheme…*"

(vi)Several correspondence between TMC and DAE showing that even small decisions, such as replacement of a Mahindra Jeep or bus, administrative approval of DAE was taken by TMC.

(vii)Circular dated 31 May 1999 issued by the DAE directing all autonomous institutes including TMC to take action in respect of the misuse of LTC and submission of fraudulent claims.

(viii) OM dated 20 September 2000 issued by the DAE conveying of Atomic Energy Commission for implementation of incentives for Scientist/Engineers in all autonomous institutes including TMC.

(ix)Office order dated 8 March 1961 issued by the CAO of TMC recording suspension of LTC for a period of two years in accordance with the DoPT, OM dated 2 March 2001.

The above documents undoubtedly show exercise of administrative control by GOI through TMC as various decisions relating to affairs of TMC require administrative approval of DAE.

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29) The constitution of Governing Council, TMC would again show exercise of administrative control by the Central Government over TMC. By OM dated 14 March 2000, the GOI, DAE notified reconstitution of Governing Council of TMC. The reconstituted Governing Council had the Secretary, DAE as ex-officio Chairman of the Governing Council and Joint Secretary (R & D) and Joint secretary (Finance) I DAE being two ex-officio members. Thus, the Governing Council of the TMC is chaired by the Secretary of DAE in addition to the two ex-officio members being Joint Secretaries in DAE on the Governing Council.

30) At the other end of the spectrum is reliance of Mr. Shetty on the bye-laws of TMC. The bye-laws published in the year 2000 are placed on record. The bye-laws first enumerate details of the Governing Council which at that time, consisted of four members from GOI, three members of Sir Dorabji Tata Trust, two members co-opted by the Council and one ex-officio member being the Director. The bye-laws no doubt permit TMC to generate its own revenue as well as to undertake recruitment and determine service conditions of its employees. However, it has also come on record that the Central Government has from time to time decided the issues relating to the service conditions such as pay, pension etc. of the employees of TMC. Infact it appears that the employees of TMC from time to time sought implementation of pay-scales and pension schemes applicable to the Central Government employees and GOI has taken decisions from time to time to extend the said benefits. The approval of the Central Government in this regard is necessary as the funds required for pay, pension etc. are ultimately borne through the grants released by the

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GOI to TMC. After considering the overall conspectus of the evidence on record, I am of the view that though Tata Memorial Centre is not 'under control' of Government of India, the Central Government undoubtedly exercises control over TMC. It cannot be stated that TMC is completely free from the control of the Central Government. It receives grants from the Central Government, most of its operations are carried out from the grants received from the Central Government. Its accounts are audited by the Comptroller and Auditor General of India. Several decisions *qua* its operations as well as service conditions of employees are taken by the Central Government. There is a heavy presence of officials of Central Government on the Governing Council of TMC. The inescapable conclusion that emerges is that the Central Government exercises control over TMC. In my view, therefore TMC would be covered by the provisions of amended definition of the term 'appropriate government' under Section 2(a)(i) as it satisfies the conditions of '*autonomous bodies controlled by the Central Government*'.

31) What is used between the two words "owned" and "controlled" is 'or'. Therefore, it is not necessary to enquire whether TMC is 'owned' by the Central Government. Even if it is 'controlled' by the Central Government, it would satisfy the test for determination of Central Government as its appropriate Government. I am therefore of the view that the appropriate Government for TMC in the light of the amended definition would be the Central Government. The impugned orders passed by the Industrial Court are thus totally unsustainable.

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32) Writ Petitions accordingly succeed and I accordingly proceed to pass the following Order :

i) Judgment and Order dated 16 February 2022 passed by the Industrial Court in Revision Application (ULP) No. 38 of 2021 as well as Judgment and Order dated 12 February 2022 passed in Complaint (ULP) Nos. 388 of 2014, 128 of 2015 and 318 of 2015 are set aside.

ii) It is declared that the appropriate government for Tata Memorial Centre is Central Government.

iii) Complaint (ULP) No. 99 of 2008 filed before Labour Court and Complaint (ULP) Nos. 388 of 2014, 128 of 2015 and 318 of 2015 filed before Industrial Court are held to be not maintainable.

iv) The Tata Memorial Hospital Workers Union would at liberty to initiate appropriate proceedings in respect of cause of action sought to be espoused in Complaint (ULP) Nos.99 of 2008, 388 of 2014, 128 of 2015 and 318 of 2015 before appropriate forum. All questions on merits of the complaint are left open.

33) Writ Petitions are accordingly **allowed**. Rule is made absolute in above terms.

SANDEEP V. MARNE, J.

34) After the judgment is pronounced, the learned counsel appearing for the Union would pray for stay of the judgment for a period of 8 weeks from today. This Court has held that the

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appropriate government for Tata Memorial Hospital is Central Government and the complaints filed by the Workers-Union, would not be maintainable. In that view of the matter, there is no question of staying the judgment.

SANDEEP V. MARNE, J.

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