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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 40113 OF 2017 (L-RES)
C/W
WRIT PETITION NO. 44263 OF 2017 (L-RES)
WRIT PETITION NO. 31611 OF 2019 (L-RES)
WRIT PETITION NO. 52329 OF 2019 (L-RES)
WRIT PETITION NO. 197 OF 2020 (L-RES)
WRIT PETITION NO. 6697 OF 2022 (L-RES)

IN WP NO.40113/2017:

BETWEEN:

1. BANGALORE METRO RAIL CORPORATION LTD.,
EMPLOYEES UNION (REGD.)
HAVING ITS REGD. OFFICE AT:
807, JYOTHI, 5TH MAIN ROAD,
VIJAYANAGAR, BENGALURU-40,
REPRESENTED BY ITS GENERAL SECRETARY,
SRI.T.R.UDAYA, AGED ABOUT 31 YEARS.

2. MANJUNATH S,
S/O SRI.SHIVASHARANAPPA,
WORKING AS STATION CONTROLLER,
BAIYAPPANAHALLI METRO STATION,
BMRCL, BAIYAPPANAHALLI,
BENGALURU-560 038.

3. SAGAR S
S/O SRI SEKAR K
WORKING AS MAINTANER PEENYA DEPOT BMRCL
PEENYA BENGALURU - 560058
(PETITIONER NO.3 IS DELETED V/O/DT 17.02.2023

OF THE HON'BLE HIGH COURT OF KARNATAKA)

...PETITIONERS

(BY SRI P S RAJAGOPAL, SR. ADV FOR
SMT ASHWINI RAJAGOPAL, ADVOCATE)

AND:

1. BANGALORE METRO RAIL CORPORATION LTD.,
(JOINT VENTURE OF GOVERNMENT OF INDIA AND
GOVERNMENT OF KARNATAKA) HAVING ITS
REGISTERED OFFICE AT 3RD FLOOR,
BMTC COMPLEX, KENGAL HANUMANTHAIAH
ROAD BENGALURU - 560027,
REPRESENTED BY ITS MANAGING DIRECTOR.

2. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOUSING & URBAN AFAFIRS,
MAULANA AZAD RD, RAJPATH AREA,
CENTRAL SECRETARIAT, NEW DELHI - 110001.

3. THE DEPUTY CHIEF LABOUR COMMISSIONER (C)
GOVERNMENT OF INDIA,MINISTRY OF LABOUR,
"SHRAM SADAN", YESHWANTHPUR
INDUSTRIAL SUBURB AREA, II STAGE,
GORGUNTEPALYA,
TUMKUR ROAD, BANGALORE - 560022.

4. THE REGIONAL LABOUR COMMISSIONER (C),
GOVERNMENT OF INDIA, MINISTRY OF LABOUR,
"SHRAM SADAN", YESHWANTHPUR
INDUSTRIAL SUBURB AREA II STAGE,
GORGUNTEPALYA, TUMKUR ROAD,
BANGALORE - 560022.

5. GOVERNMENT OF KARNATAKA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
LABOUR DEPARTMENT, VIKAS SOUDHA,

BANGALORE - 560001.

...RESPONDENTS

(BY SRI S SANTHOSH NARAYAN, ADV. FOR R1,
SRI M N KUMAR, CGC FOR R2 TO R4,
SRI SANTHOSH GOGI, AAG WITH
SRI MANJUNATH B, AGA FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE BMRCL EMPLOYEES CONDUCT, DISCIPLINE AND APPEAL RULES, 2014 VIDE ANNEX-D BY DECLARING THE SAME AS ILLEGAL, IRREGULAR, ARBITRARY, MALAFIDE, CAPRICIOUS AND NOT SUSTAINABLE BOTH IN LAW AND ON FACTS AND ETC.

IN WP NO.44263/2017:

BETWEEN:

1. BANGALORE METRO RAIL CORPORATION LTD.,
   EMPLOYEES UNION(REGD),
   HAVING ITS REGD OFFICE AT:NO.807,
   JYOTHI, 5TH MAIN ROAD,
   VIJAYANAGAR, BENGALURU-40,
   REPRESENTED BY ITS GENERAL SECRETARY ,
   SRI T R UDAYA, AGED ABOUT 31 YEARS.

2. MANJUNATH S,
   S/O SRI SHIVASHARANAPPA,
   WORKING AS STATION CONTROLLER,
   BAIYAPPANAHALLI METRO STATION,
   BMRCL, BAIYAPPANAHALLI,
   BENGALURU-560038.

3. SAGAR S
   S/O SRI SEKAR K,
   AGED ABOUT 26 YEARS,
   WORKING AS MAINTAINER

PEENYA DEPOT, BMRCL
PEENYA, BENGALURU-560058.
(PETITIONER NO.3 IS DELETED VIDE
ORDER DT 09.01.2023 OF THE HIGH COURT
I.A.NO.1/22.

...PETITIONERS

(BY SRI P S RAJAGOPAL, SR. ADV. FOR
SMT ASHWINI RAJAGOPAL, ADVOCATE FOR PETITIONER 1
AND 2)

AND:

1. GOVERNMENT OF KARNATAKA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
VIKAS SOUDHA, BANGALORE-560001.

2. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOUSING AND URBAN AFFAIRS,
MAULANA AZAD RD, RAJPATH AREA,
CENTRAL SECRETARIAT, NEW DELHI-110001.

3. BANGALORE METRO RAIL CORPORATION LTD.,
(A JOINT VENTURE OF GOVERNMENT OF INDIA &
GOVERNMENT OF KARNATAKA),
HAVING ITS REGISTERED OFFICE AT:
3RD FLOOR, BMTC COMPLEX,
KENGAL HANUMANTHAIAH ROAD,
BENGALURU -560027,
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI SANTOSH GOGI, AAG WITH
SRI MANJUNATH B, AGA FOR R1,
SRI M N KUMAR, CGC FOR R2,
SRI S SANTHOSH NARAYAN, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DTD.7.7.2017 VIDE ANNEX-C ISSUED BY THE R-1 BY DECLARING THE SAME AS ILLEGAL, IRREGULAR, ARBITRARY, CAPRICIOUS AND NOT SUSTAINABLE BOTH IN LAW AND ON FACTS.

IN WP NO.31611/2019:

BETWEEN:

M/S BANGALORE METRO RAIL
CORPORATION LIMITED,
BMTC COMPLEX, 3RD FLOOR,
K H ROAD, SHANTHINAGAR,
BANGALORE-560027,REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER,
SRI D R PRASHANTHA.

...PETITIONER

(BY SRI SANTHOSH NARAYAN S, ADVOCATE)

AND:

1. UNION OF INDIA,
   MINISTRY OF LABOUR AND EMPLOYMENT,
   SHRAM SHAKTI BHAVAN,
   RAFI MARG, NEW DELHI-110001,
   REPRESENTED BY ITS DEPUTY DIRECTOR.

2. THE GENERAL SECRETARY,
   BMRCL EMPLOYEES UNION,
   # 807, JYOTHI, 5TH MAIN ROAD,
   VIJAYANAGAR, BANGALORE-560040.

3. REGIONAL LABOUR COMMISSIONER,
   SHRAM SADAN,YESHWANTHPUR INDUSTRIAL
   SUBURUB-II STAGE,

GORAGUNTEPALYA,TUMKUR ROAD,
BANGALORE-560022.

...RESPONDENTS

(BY SRI M N KUMAR, CGC FOR R1,
SRI P.S.RAJAGOPAL, SR. ADVOCATE FOR
SRI JAYANTH DEV KUMAR, ADVOCATE FOR R2,
SRI SANTOSH GOGI, AAG WITH
SRI MANJUNATH B, AGA FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE REFERENCE ORDER DATED 4.12.2018 AT ANNEXURE-F TO THIS WRIT PETITION.

IN WP NO.52329/2019:

BETWEEN:

M/S BANGALORE METRO RAIL
CORPORATION LIMITED,
BMTC COMPLEX, 3RD FLOOR,
K H ROAD, SHANTHINAGAR, BANGALORE-560027.
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
HUMAN RESOURCES (O AND M),
SRI MANJUNATHASWAMY.

...PETITIONER

(BY SRI S SANTHOSH NARAYAN, ADVOCATE)

AND:

1. ASSISTANT LABOUT COMMISSIONER (CENTRAL),
   (CENTRAL) AND CONCILIATION OFFICER,
   SHRAM SADAN, YESHWANTHPUR INDUSTRIEAL
   SUBURU-II STAGE, GORAGUNTEPALYA,
   TUMKUR ROAD, BANGALORE-560022.

2. THE GENERAL SECRETARY,
   BMRCL EMPLOYEES UNION,

NO.807, JYOTHI, 5TH MAIN ROAD,
VIJAYANAGAR, BANGALORE-560040.

...RESPONDENTS

(BY SRI M N KUMAR, CGC FOR R1,
SRI P S RAJAGOPAL, SR. ADVOCATE FOR
SRI JAYANTH DEV KUMAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 13.9.2019 AT ANNX-F ISSUED BY R-1 TO THIS W.P.

IN WP NO.197/2020:
BETWEEN:

1. BANGALORE METRO RAIL CORPORATION LTD.,
   EMPLOYEES UNION (REGD),
   HAVIANG ITS REGD OFFICE
   AT NO.807, JYOTHI, 5TH MAIN ROAD,
   VIJAYANAGAR, BENGALURU-40,
   REP. BY ITS GENERAL SECRETARY,
   SRI UDAYA, T.R. AGED ABOUT 34 YEARS.

2. MANJUNATH S,
   S/O SRI SHIVASHARANAPPA,
   AGED ABOUT 40 YEARS,
   WORKING AS STATION CONTROLLER,
   BAIYAPPANAHALLI METRO STATION,
   BMRCL, BAIYAPPANAHALLI,
   BENGALURU-560 038.

3. VEERABHADRA SWAMY.E, S/O SRI ESHWARAPPA,
   WORKING AS JUNIOR ENGINEER,
   BAIYAPPANAHALLI DEPOT BMRCL,
   BAIYAPPANAHALLI,BENGALURU-560038.

...PETITIONERS

(BY SRI P S RAJAGOPAL, SR. ADVOCTE FOR
SRI JAYANTH DEV KUMAR, ADVOCATE)

AND:

1. GOVERNMENT OF KARNATAKA,
   BY ITS PRINCIPAL SECRETARY,
   LABOUR DEPARTMENT,
   MULTISTORIED BUILDING,
   BENGALURU-560 001.

2. UNION OF INDIA,
   REP BY SECRETARY TO THE GOVERNMENT,
   MINISTRY OF LABAOUR AND EMPLOYMENT,
   RAFI MARG, NEW DELHI-110011.

3. BANGALORE METRO RAIL CORPORATION LTD.,
   A JOINT VENTRURE OF GOVERNMENT OF INDIA
   AND GOVERNMENT OF KARNATAKA),
   HAVING ITS REGISTERED OFFICE AT
   3RD FLOOR, BMTC COMPLEX,
   KENGAL HANUMANTHAIAH ROAD,
   BENGALURU-560 027,
   REP BY ITS MANAGING DIRECTOR.

...RESPONDENTS

(BY SRI SANTOSH GOGI, AAG WITH
SRI MANJUNATH B, AGA FOR R1,
SRI S SANTHOSH NARAYAN, ADVOCATE FOR R3,
SRI M N KUMAR, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 18.11.2019 (ANNX-L) ISSUED BY THE R-1.

IN WP NO 6697 OF 2022:
BETWEEN

BENGALURU METRO RAIL CORPORATION LTD.,
BMTC COMPLEX, 3RD FLOOR,
K H ROAD, SHANTINAGAR, BENGALURU-560027,

REPRESENTED BY ITS DEPUTY
GENERAL MANAGER-HR AND O AND M,
SRI M S M SHASTRY.

...PETITIONER

(BY SRI SANTHOSH NARAYAN S, ADVOCATE)

AND:

1. ASSISTANT LABOUR COMMISSIONER (CENTRAL),
   SHRAMEVA JAYATE BHAWAN, II STAGE,
   YESHWANTHPUR INDUSTRIAL SUBURB,
   GORAGUNTEPALYA, TUMKUR ROAD,
   BENGALURU-560022.

2. THE GENERAL SECRETARY BMRCL EMPLOYEES' UNION
   NO.807, JYOTHI, 5TH MAIN ROAD
   VIJAYANAGAR, BENGALURU-560040.

...RESPONDENTS

(BY SRI M N KUMAR, CGC FOR R1,
SRI RAJAGOPAL, SR. ADV. FOR
SRI JAYANTH DEV KUMAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 10.02.2022 PASSED BY THE R1 IN FILE NO.8(71/2021-B3) AT ANNEXURE-K TO THIS WRIT PETITION.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11TH AUGUST, 2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM : HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

Bangalore Metro Rail Corporation Ltd. ("BMRCL") is a Company registered under the Companies Act, 1956(Act, 1956). BMRCL operates a metro rail network in Bengaluru. Said metro rail is popularly known as "***Namma Metro"*** meaning thereby ***Our Metro***.

2. The BMRCL Employees Union (Union) claims that Central Government is the "appropriate Government". BMRCL and State contend that the State Government is the "appropriate government".

3. In this batch of petitions, questions that need to be resolved are:

(i) Which is the "appropriate government" for BMRCL in relation to any Industrial Dispute?

(ii) Whether the State Government under Section 2(n)(vi) of the Industrial Disputes Act, 1947 (Act, 1947)

can notify the services of Bangalore Metro Rail Corporation Ltd as "Public utility service"?

(iii) Whether the State Government under Section 2 (1) of the Karnataka Essential Services Maintenance Act, 2013, can notify the services of Bangalore Metro Rail Corporation Ltd as *essential service*?

4. The Union has filed three Writ Petitions namely:

(i) W.P.No.40113/2017
(ii) W.P.No.44263/2017
(iii) W.P.No.197/2020

The BMRCL has filed three Writ Petitions namely:

(i) W.P.No.31611/2019
(ii) W.P.No.52329/2019
(iii) W.P.No.6697/2022

Facts in Writ Petition No.40113/2017

5. In this petition, the Union assailed the BMRCL Employees (Conduct, Discipline and Appeal) Rules, 2014 (Rules, 2014) on the premise that it could not have been approved by the authority under the State Government as the "Appropriate Government" for BMRCL is the Central

Government. The petitioner-Union sought for a writ of mandamus to restrain the respondent-State from granting exemption under Section 14 of the Industrial Employment Standing Orders Act, 1946 ("Act, 1946"). In addition, direction is also sought to initiate proceeding against the concerned officials of BMRCL by invoking Sections 13 and 14-A of the Act, 1946.

6. Respondent No.1 - BMRCL took a contention that the petition is premature and also urged that the Government of Karnataka is the "appropriate Government" for BMRCL. It also urged that the Act, 1946 does not apply to BMRCL as the employees of BMRCL mostly perform specialized supervisory functions and are not workmen as such, the BMRCL has sought exemption under Section 14 of the Act, 1946.

7. The State of Karnataka – respondent No.5 opposed the petition on the premise that the petition is

premature and the application filed by the BMRCL seeking exemption under Section 14 of the Act, 1946 is still under consideration.

WRIT PETITION No.44263/2017

8. This petition is filed by the Union challenging the Notification dated 07.07.2017 issued under Section 3 of the Karnataka Essential Services Maintenance Act, 2013 (Act, 2013) prohibiting strike by the employees of BMRCL.

9. The petitioner contended that the State Government has no jurisdiction to declare services of BMRCL as the 'essential services' as the services of BMRCL is not coming under the purview of the Act,2013. The petitioner urged that Metro Rail being a Central subject under the Union List of Constitution of India and projects concerning Metro Rail are governed by Central legislations namely Metro Railways (Construction of Works) Act, 1978 ("Act, 1978") and Metro Railways (Operation and

Maintenance) Act, 2002 ("Act, 2002"), the State Government under the Act, 2013 has no jurisdiction to declare services of BMRCL as '*Essential Services'*.

WRIT PETITION No.197/2020

10. In this petition, the Union has impugned the Notification dated 18.11.2019 issued under Section 2(n)(vi) of the Act, 1947, declaring BMRCL as a '*public utility service'*. The challenge is on the premise that the State Government has no jurisdiction.

WRIT PETITION No.31611/2019

11. Petitioner-BMRCL has assailed the order dated 04.12.2018 referring the *industrial dispute* to the Central Government Industrial Tribunal. The challenge is on the premise that Central Government is not the 'Appropriate Government'.

WRIT PETITION No.52329/2019

12. The BMRCL has assailed the order dated 13.09.2019 declaring 12 office bearers of the Union as protected workmen, on the premise that the Central Government is not the 'Appropriate Government' under Section 2(a) of the Act, 1947 and respondent No.1 lacked jurisdiction to pass impugned order.

WRIT PETITION No.6697/2022

13. Petitioner - BMRCL, challenges the order dated 10.02.2022 declaring 12 office bearers of Union as protected workers. The challenge is on the same ground as noticed in W.P.No.52329/2019.

14. Sri P S Rajagopal, learned Senior counsel for the petitioner-Union in W.P.No.40113/2017, W.P.No.44263/2017 and W.P.No.197/2020 raised the following contentions:

(i) Under Section 2(a)(i) of the Act, 1947 for a Railway Company, the Appropriate Government is the Central Government and so also for a Company run by or under the authority of the Central Government;

(ii) Section 2(o) of the Act, 1947 defines the expression "Railway company" and the said definition incorporates the definition of "railway company" as defined in sub-section (5) of Section 3 of Indian Railways Act, 1890 (Act, 1890). Thus, BMRCL would be a railway company as defined under the Act, 1947.

(iii) Under the Contract Labour (Regulation and Abolition Act, 1970 (Act, 1970)**,** the "appropriate Government" is defined in Section 2(a)(i). As per the said definition the "appropriate Government" for an establishment

under the Act, 1970 is the "appropriate Government" as provided under the Act, 1947.

(iv) Under the Act, 1946 the "appropriate Government" is defined in Section 2(b). As per the said definition, the "Appropriate Government" in respect of industrial establishment under the control of Central Government or a Railway administration is the Central Government.

(v) Under the Act, 1890, the expression "railway company" is defined under Sub-section (5) of Section 3. Under the said definition, a "railway company" includes the owners or lessees of a railway or parties to an agreement for working a railway;

(vi) The Memorandum of Understanding among Government of India, Government of Karnataka and BMRCL provides that BMRCL shall

construct, develop, commission, operate and maintain the metro rail project in accordance with the approved project schedule; BMRCL is a party to an agreement for working a railway and would be a 'railway company' as defined under Section 2(o) of the Act, 1947 read with sub-section 3(5) of the Act, 1890.

(vii) The Act, 1978 does not define the expression "railway company". However, sub-section (2) of Section 2 refers to the Act, 1890 and provides that the expression *used and not defined* under the Act, 1978, shall have the meaning as assigned in the Act, 1890. Thus, the definition of "railway company" as defined in Act, 1890 should also be read into the Act, 1978.

(viii) Likewise, the Act, 2002 does not define the expression 'railway company' and makes reference to the Act, 1978 in respect of words

and expressions, *used but not defined* in the Act, 2002.

(ix) The Railways Act, 1989 which repealed the Act, 1890 does not define the expression "railway company".

(x) Though the Act, 1890 is repealed and is not in force, the repeal of the Act, 1890 does not obliterate the definition of the "Railway company" incorporated by reference in Section 2(o) of the Act, 1947 and sub-section (2) of Section 2 of the Act, 1978.

(xi) The metro rail is predominantly controlled by the Central Government. Under the Act, 1978 and the Act, 2002, the metro railway cannot be operated without the permission of the Central Government and its operation can be stopped at any time by the Central Government;

(xii) Section 2(j) of Act, 2002 defines 'metro railway administration' in relation to Government Metro Railway to mean the General Manager of that railway and the General Manager can be appointed only with the consent of the Central Government.

15. Sri S.Santosh Narayan, learned counsel for the BMRCL raised the following contentions:

(i) The definition of 'Appropriate Government' as provided under Section 2(a)(i) of the Act, 1947 would exclude the Central Government in case the share holding of Central Government in those companies is less than 51%. The Central Government would be the Appropriate Government for only those companies referred to in Section 2(a)(i).

(ii) The Central Government's shareholding in BMRCL is only 50% and BMRCL is not

specifically referred to in Section 2(a)(i) of the Act, 1947, Central Government cannot be the Appropriate Government for BMRCL.

(iii) Section 2(o) of the Act, 1947 defines "Railway company" by referring to the definition of "railway company" as defined in Section 3(5) of Act, 1890. Since Act, 1890 is repealed by Railways Act, 1989 (Act, 1989), after the repeal of Act, 1890, Section 2(o) of the Act, 1947 is not amended to define the expression 'Railway company'. Thus, the definition of "Railway company" as defined in Act, 1890 is not available, and the said definition cannot be read into in Section 2(o) of Act, 1947.

(iv) The Act, 1890 defines the expression 'tramway' under Section 3(1) and it incorporates the definition of 'tramway' as defined in Tramways Act, 1886. The definition of 'tramway' as

provided under Section 3(5) of Tramways Act, 1886 does not cover the Metro Railway as metro rail was not in existence in 1886.

(v) The Act, 1989 which defines the "railway" specifically excludes the tramway.

(vi) BMRCL stands excluded from the applicability of Act, 1989 as metro railway is not covered under the definition of railway under the Act, 1989.

(vii) BMRCL is governed under the provisions of Act, 2002 and the expression "metro railway" is defined in Section 2(i) under the Act, 2002. Said definition excludes tramways and "Railway company". Thus, BMRCL cannot be equated with a "railway company" as it is defined under the Act, 2002.

(viii) The Act, 2002 also defines the expression railway in Section 2(p) by referring to the definition of railway as defined in Clause (31) of

Section 2 of Act, 1989. The said definition excludes tramway and does not include metro railway, as such, BMRCL is not a "railway company".

(ix) The Act, 2002 being a Special Legislation, Act, 1890 which is repealed by Act, 1989 cannot prevail over the Special Legislation.

(x) Under the Memorandum of Understanding among the Government of India, Government of Karnataka and BMRCL, the cost of land, rehabilitation and resettlement is to be borne by the Government of Karnataka. Necessary approval, clearance and sanction for smooth implementation of the project has to be accorded by the Government of Karnataka. Thus, the State Government has pervasive control.

(xi) In Writ Petition No.16187/2009 in ***M/s Logwell Forge Ltd. vs Bengaluru Metro Rail Corporation Limited***[1], the Court has held that the Government of Karnataka has substantial control over BMRCL.

(xii) In Writ Appeal No.3529/2009, the Court has held that the State Government has substantial control over BMRCL;

(xiii) In an identical case in ***CMRL Employees Union vs Ministry of Housing and Urban Affairs and Ors***[2], the High Court of Madras has held that Chennai Metro is not a railway company coming under the purview of the Central Government.

16. Learned Additional Advocate General Sri. Santosh Gogi, appearing for the State raised the following contentions:

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[1] *ILR 2010 Kar 87*
[2] *WP.No.12931/2019*

(i) BMRCL is the joint venture of the Government of Karnataka and Government of India each having 50% stake in the BMRCL

(ii) The Board of Directors of BMRCL comprises following heads of the executive signifying pervasive control of the State Government:

1. Hon'ble Chief Minister of GOK
2. Hon'ble Minister of State of Bengaluru City Development,
3. Chief Secretary to the GOK,
4. Principal Secretary to GOK (Finance Department),
5. Chairman, BDA,
6. Secretary to Government Housing and Urban Development Department,
7. Commissioner Bengaluru City Corporation,
8. Managing Director, Karnataka Urban Infrastructure Development and Finance Corporation,
9. Special Officer, Mass Rapid Transit System.

(iii) The decision relating to the land acquisition, shifting of utilities and other structural alignment, rehabilitation of the project affected

persons, multi model integration and incidental decisions are by the State Government.

(iv) Metro Rail by BMRCL is not carried on by or under the Authority of the Central Government. BMRCL is a registered Company under the Act, 1956, and its Board runs the metro railway in Bengaluru as such, it is not an industry carried on by or under the authority of Government of India;

(v) The Act, 1989 defines railway in Section 2(31) and the definition of railway excludes the tramway. Thus, the metro rail which is similar to a tramway cannot be a railway company.

(vi) The Act, 2002 is the special enactment and it defines the expression, "metro railway" and the "railway" and the Act, 2002 makes a distinction between "railway" and "metro railway". Hence, the "metro railway" is different from "railway"

and definition of "railway" or the "railway company" in the Act, 1890 cannot be looked into;

(vii) Since, the expression "metro railway" is not referred in the Act, 1947, reference cannot be made to the definition of "railway company" in the Act, 1989 which is repealed.

(viii) The role of the Central Government is confined to the statutory framework and nothing to do with the establishment and operation of the metro railway.

(ix) Section 2(f) of Act, 2002 defines "Government metro railway" and Section 2(l) defines "non-Government metro railway". BMRCL being a Company registered under the Act, 1956 is a "non-Government metro railway". As such, the Central Government is not the appropriate Government for metro railway.

(x) The Ministry of Urban Development, Government of India vide its letter dated 11.05.2006 has informed the Chief Secretary of State of Karnataka to enact appropriate Legislation to regulate construction, operation and maintenance of the system. Thus, the State Government has the legislative competence to enact law relating to maintenance and operation of the metro railway.

(xi) As per Clauses 12.16 to 12.18 of Memorandum of Understanding dated 24.12.2010, the Government of Karnataka has to bear the financial losses if any, and capital expenditure during the operational phase; Thus, the State Government has the primacy over the Central Government in the operation, running and maintenance of metro railway;

(xii) Under Clause D(i) of Metro Rail Policy, 2017, the State Government has to moot for assistance by the Central Government and the State Government has to provide required support to metro rail companies.

17. Learned Counsel Sri. M.N Kumar for the Union of India would urge the following points**:**

(i) Memorandum of Association of BMRCL classifies its main object as carrying on railway transport as a railway company. Thus, BMRCL is a Railway Company under Section 2(a)(i) r/w 2(o) of the Act, 1947.

(ii) The Bangalore Metro Phase-I received Government of India's approval with equity/ subordinate debt and imposed conditions governing implementation which demonstrates central control.

(iii) BMRCL is registered as Principal Employer with the Central Government under Section 7 of the Act, 1970 indicating jurisdiction of authorities under the Legislation passed by the Parliament.

(iv) The Central Government in exercise of its powers under Section 1(3) of Act, 1978 issued Notification extending the Act, 1978 to Karnataka which establishes the Central Government's control governing metro construction in Bengaluru.

(v) The Joint Venture Memorandum of Understanding dated 24.12.2010 provides 50:50 share holding. It provides for appointment of General Manager only with the approval of the Central Government and the Chairman is nominated by the Central Government.

(vi) Phase-II of Bangalore Metro Railway is approved by the Central Government in exercise of power under the Act, 1978 and Act, 2002.

(vii) The Committee constituted by the Central Government is involved in payment of wages, inspections, compliance and grievance redressal.

(viii) The Delhi High Court treated Delhi Metro Rail Corporation as "Railways" for purposes of Section 2(a)(i) of Act, 1947 and The Essential Services Maintenance Act, 1981 in the context of industrial action, supporting Central "appropriate Government".

(ix) The Karnataka Labour Commissioner's letter dated 26/04/2022 states BMRCL does not fall under the State Labour Department and that the Central Government shall address

workmen's grievances, evidencing inter-Governmental consensus on jurisdiction.

18. This Court has considered the contentions raised at the bar and perused the records.

19. The question whether the Central Government or the State Government is the "Appropriate Government" for BMRCL has to be decided by referring to the definition of "Appropriate Government" referred to in various legislations noted above.

20. The relevant portion of definition of "appropriate Government" as found in Section 2(a)(i) of Act, 1947 reads as under:

> "**2(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 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

> xxxx 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, xxxxxxxxx

(other portion of the definition not relevant for these cases is omitted)

21. On perusal of the definition of "Appropriate Government" under Section 2(a)(i) of the Act, 1947 *extracted above*, it is noticed that the Central Government would be the "Appropriate Government",

(i) in case the establishment is run by the Central Government or under the authority of the Central Government.

(ii) in case the establishment is a railway company.

Whether the BMRCL is run under the Authority of the Central Government?

22. It is not the case of the Employees Union that BMRCL is run by the Central Government. It is urged that

the Central Government has pervasive control over BMRCL as such, BMRCL is run under the authority of the Central Government if not *by* the Central Government.

23. The *General Manager* for BMRCL is appointed by the Government of India as provided under Section 3 of Act, 1978. Under the Memorandum of Understanding, though the State Government has the power to appoint *Managing Director* for metro railway, such appointment is only with the consent of the Central Government.

24. The powers conferred on the Central Government with reference to the relevant provisions in the Act, 1978 and Act, 2002 are provided in the chart below for easy reference:

METRO RAILWAYS (CONSTRUCTION OF WORKS) ACT, 1978

SECTION	GIST/CONTENT
1(3)	Central Government may declare the Act's application to National Capital Region, other metropolitan cities and metropolitan areas after consultation with State Government

	(consultation only, not consent required).
3	Central Government appoints the General Manager for every metro railway to administer metro railway operations.
4(1)	Central Government may constitute an Advisory Board for every metro railway to assist on development plans, project financing and ensuring alignment with local requirements.
4(3)	Central Government appoints the Chairman of the Advisory Board from among its members.
27(1)	Central Government appoints commissioners of metro railway as it thinks fit.
27(2)	Commissioners report to Central Government on metro railway fitness for public use and make inspections as Central Government directs.
28	Commissioners exercise powers subject to control of Central Government.
30	Metro railway administration may sell or dispose of surplus land vested in Central Government only with previous approval of Central Government.

31(1)	Metro railway administration gives notice of accidents to Central Government (not State Government) in prescribed form and time.
31(2)	Central Government may appoint a commission to enquire into accidents and report on causes and compliance with safety provisions.
32(1)	Central Government may by notification add metro alignments to the Schedule for new metropolitan cities/areas or alter existing alignments if necessary for construction and maintenance.
42	Central Government has power to issue orders to remove difficulties in giving effect to the Act's provisions for up to two years from Act's application to any metropolitan city.
44(1)	Central Government has exclusive power to make rules by notification in Official Gazette to carry out the Act's purposes.

THE METRO RAILWAYS (OPERATION AND MAINTENANCE) ACT, 2002

SECTION	CONTENT/GIST
1(2)	Central Government may extend the Act to other metropolitan areas and cities (except Kolkata) by Notification after consultation with State

	Government. Extension of power is solely with Centre.
2(1)(a)	Central Government is defined as the Ministry of Government of India dealing with Railways in relation to technical planning and safety of metro railways.
3(1)	Central Government may, by Notification, constitute Government metro railways for efficient administration in NCR, metropolitan city and metropolitan area.
4(1)	Central Government shall appoint the General Manager of a Government metro railway by Notification in whom the general superintendence and control shall vest.
7(1)	Central Government may appoint one or more Commissioners of Metro Railway Safety.
8	Commissioner's duties include inspecting metro railways and reporting to Central Government; making inspections as directed by Central Government.
9	Commissioner exercises powers subject to control of Central Government for inspection, inquiry, and requiring attendance of officials.
12	Chief Commissioner of Railway Safety shall

	prepare annual report and forward to Central Government.
13	Central Government shall cause annual report of Chief Commissioner of Railway Safety to be laid before each House of Parliament (not State Legislature).
14	Metro railway shall not be opened for public carriage of passengers except with previous sanction of Central Government.
16	Central Government's sanction under sections 14 and 15 applies to opening of additional lines, stations, junctions, remodelling of yards and bridges.
18	Central Government may direct closure of metro railway for public carriage or discontinuance of rolling stock use after Commissioner's report on safety.
19	Re-opening of closed metro railway requires inspection by Commissioner and sanction in accordance with provisions - approval ultimately from Central Government.
20	Previous sanction of Central Government required before using rolling stock of different design or type; sanction given after Commissioner's report.

21	Central Government may delegate its powers or functions under Chapter-V (Opening of Metro Railway) to Commissioner by Notification.
22(1)	Central Government may make rules by Notification to carry out provisions of Chapter V relating to opening of metro railways.
28	Metro railway administration shall provide means of communication between passengers and officials as approved by Central Government.
32(1)	Central Government may make rules by notification to carry out provisions of Chapter VI (Working of Metro Railway).
34(1)	Central Government may constitute Fare Fixation Committee for recommending fare for carriage of passengers.
38(1)	Metro railway accidents to be notified to police officers appointed by Central Government, in addition to local authorities and State Government.
47(1)	Central Government may make rules by notification to carry out provisions of Chapter VIII (Accidents).
48	Central Government may appoint Claims Commissioner by notification for adjudicating

	compensation claims.
50	Claims Commissioner holds office for term specified by Central Government.
51(2)	Claims Commissioner may be removed from office by order of Central Government on ground of proved misbehavior or incapacity.
56(1)	Central Government may make rules by notification to carry out provisions of Chapter IX (Claims Commissioner).
78(2)	Central Government may, by notification, specify metro railway properties for which damage/destruction attracts enhanced penalty.
86	Metro railway administration (including non-Government) bound by directions on policy questions given by Central Government in writing.
87	No non-Government metro railway shall work without obtaining permission from Central Government.
88	Protection from legal proceedings for actions in good faith extends to Central Government, metro railway administration, and officials.
89(1)	Metro railway property cannot be taken in execution of decree without previous sanction of

	Central Government.
97	Powers, duties and functions of security staff shall be as prescribed by Central Government through rules.
98(1)	Central Government may delegate its powers under the Act to subordinate officers or metro railway administration officers by notification.
99(1)	Central Government may make orders to remove difficulties in giving effect to provisions of the Act.
100(1)	Central Government may make rules by notification for carrying out purposes of the Act.
101	Government metro railway administration may make regulations with previous approval of Central Government.
102	Rules made by Central Government and regulations made by metro railway administration to be laid before Parliament (not State Legislature).

25. It is indeed true that the State Government which has 50% share holding like the Central Government, has certain significant roles to play in BMRCL. However, the

final say in key administrative actions is that of the Central Government and the State Government has to take approvals or concurrence from the Central Government in certain crucial administrative decisions.

26. The further contention of the State that the Board of Directors in the BMRCL are the Ministers and Secretaries of the State of Karnataka, is of little assistance to the State to contend that BMRCL is run independently or under the control of the State Government, without any authority of the Central Government. Metro railway itself is governed by the Act, 1978 and Act, 2002, both Central legislations and these two legislations as already discussed above confer various powers on the Central Government. The State Government which is in charge of several operations of metro railway has to act in establishing, maintaining and operating the railway *only after necessary approval or concurrence* of the Central Government.

27. Memorandum of Understanding dated 24.12.2010 incorporates following clauses which define the role of each party to the agreement viz., Government of India, Government of Karnataka and BMRCL:

(i) Clause No.7.1 of the Memorandum of Understanding specifies that Bangalore Metro Rail Project Phase -I shall be governed by Act, 1978 and Act, 2002 or such legislation made from time to time as may be decided by Government of India;

(ii) Clause 11.1 provides for sharing of escalated cost subject to approval by empowered committee and empowered group of Ministers at Government of India level;

(iii) Clause 12.20 prohibits the Government of Karnataka from transferring the Managing Director of the Company, the State

Government nominee, without prior consent of Ministry of Urban Development, Government of India.

(iv) Clause 14.1 provides for construction, development, commission, operation and maintenance of the project in accordance with all applicable laws which would include Act, 1978 and Act, 2002.

(v) Clause 15.1 confers authority on the Board of Directors to manage BMRCL and Clause No.15.2 enables Government of India to nominate five directors including the Chairman of the Board and Government of Karnataka is enabled to appoint four directors and a Managing Director;

(vi) Clause No.15.3 mandates the Government of Karnataka to nominate the Managing Director with prior consent of Government

of India and the appointment is by the Board;

28. The Phase – II of the Bengaluru Metro is also approved by the Government of India vide order dated 21.02.2014 and Phase – II is also governed by two Central legislations viz., Act, 1978 and Act, 2002.

29. For the aforementioned reasons and provisions of law referred to above in the Act, 1970 and Act, 2002, the Court is of the view that over BMRCL - the Central Government has pervasive control and the State Government plays second fiddle to the Central Government.

Whether BMRCL is a Railway company as defined under Section 2(o) of the Industrial Disputes Act, 1947

30. Section 2(o) of the Act, 1947 defines the expression "railway company" as follows:

" 'Railway company' means a railway company as defined in Section 3 of the Indian Railways Act, 1890."

31. The Act, 1947 expressly incorporates, by reference, the definition of "railway company" contained in Section 3 (5) of the Act, 1890.

32. The Act, 1989 has repealed the Act, 1890. In the Act, 1989 the 'railway company' is not defined. After the repeal of Act, 1890, Section 2(o) of Act, 1947 which defines the expression 'railway company' is not amended. Now, the question is whether the expression "railway company" is defined in Section 2(o) of Act, 1947 which makes a reference to the definition of "railway company" as defined in Act, 1989 can be referred to despite the repeal of the Act, 1890.

33. The law in this regard is well settled as rightly urged by learned Senior counsel, Sri P.S. Rajgopal who relied on the Constitution Bench judgment of the Apex

Court in ***Ram Sarup and others vs Munshi and others***[3].

34. In case the *words and expressions* of a statute are incorporated by reference in another statute, then those *words and expressions* of the former statute, will continue to exist in the later, even if the former is repealed. To put it differently, in any statute, if the words and expressions are used incorporating by reference, those words and expressions will have *independent existence* in the statute where it is incorporated. Once such incorporation is made then those words and expressions are not dependent on the original statue from which they are incorporated. Such words and expressions are to be read as if they are written in the later statute *itself*.

[3] *AIR 1963 SC 553*

35. This being the position, the definition of "railway company" as defined in the Act, 1890 is the definition of "Railway company" as defined in Section 2(o) of Act, 1947 notwithstanding the repeal of Act, 1890.

36. The definition of 'railway company' of the Act, 1890 reads as under:

> ***"3(5) "railway company"*** *includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway."*
>
> (emphasis supplied)

37. From the language employed in the definition, it is evident that it is an inclusive definition. In the definition of "railway company", the expression 'railway' is used at two other places. The word "railway" itself is defined in Section 3(4) of the Act, 1890 and it reads as under:

> *"**Section 3(4) "railway"** means a railway, or any portion of a railway, for the public: carriage of passengers, animals or goods, and includes –*

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;,

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and

(d) all Berries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway."

38. From the definition of "railway" which is quite broad, it is explicit that the "all lines of rail" (railway track) would also be a railway. The person who owns the *lines of rail* would also be a railway company under the definition of "railway company". The person who is a lessee of a railway track is also a railway company. BMRCL is the owner of Bangalore Metro rail lines. It is a Company. Thus, BMRCL becomes the owner of the "railway and since it is Company it becomes a "Railway company".

39. More than anything else, the expression, *"parties to an agreement for work in railway"* in Section 3(5) of Act, 1890 which would also be the part of the definition of "Railway company" under Section 2(o) of the Act, 1947 is relevant. The expression, "parties to an agreement for working in railway" in its ambit includes all persons who enter into an agreement for *working a railway*. The import of the said expression is also quite clear. If a person is part of the agreement for commissioning, operating or maintaining a railway would be within the ambit of the definition of the "railway company". The reason is, the expression used in the definition is "working a railway". The word "working" in its plain grammatical sense would also mean 'operating' in addition to other connotations.

40. Government of India, Government of Karnataka and BMRCL entered into a tripartite agreement dated

24.12.2010. Clause 14.1 of the Memorandum of Understanding executed among the Government of India, Government of Karnataka, and Bangalore Metro Rail Corporation Limited (BMRCL) reads as under:

> *"BMRCL, which has been set up as a joint venture of the Government of India and the Government of Karnataka, is meant exhaustively for implementation of the project, and no new assignment shall be given to the company by the promoters unilaterally. BMRCL shall construct, develop, commission, operate, and maintain the project in accordance with the approved project schedule as stated in Clause No. 8.1 above and the applicable laws."*
>
> (emphasis supplied)

41. It is evident that BMRCL is party to the agreement where it agreed to build, operate and maintain the Metro railway in Bengaluru. BMRCL is a party to the agreement for working a railway. Thus, BMRCL is a "Railway company" as defined in Section 2(o) of the Act, 1947.

42. Once BMRCL is a "Railway company", as defined in Section 2(o) of Act, 1947, then, under Section 2(a)(i) of Act, 1947, Central Government would be the "Appropriate Government" for BMRCL.

43. The contention of the respondent-State and BMRCL that the Central Government is not having 51% stake as such, cannot be the Appropriate Government has no merit. Section 2(a)(i) of Act, 1947 does not mandate 51% stake for the Central Government in a railway company to be the Appropriate Government. Under Section 2(a)(i) of Act, 1947, if an establishment, in relation to industrial dispute is a "railway company", then, the Central Government is the appropriate Government.

44. To sum up, the Court is of the view that the Central Government is the "Appropriate Government" for two reasons:

(i) the Central Government has pervasive control over the BMRCL;

(ii) BMRCL is a "Railway company" as defined under Section 2(o) of Act, 1947 read with Section 3(5) of Act, 1890.

45. The contention of the respondent/State and BMRCL that the expression "Railway company" is not included in the definition of "metro railway" and the concept of 'metro rail' was not there in 1890 when the Act was enacted and for this reason, the metro rail cannot be treated as a "railway company" has no merit.

46. As already noticed, the "Railway company" is an inclusive definition which incorporates wide range of things *including a party to an agreement for working a railway* as discussed above and the very definition of "railway" found in the Act, 1890 would also include wide range of things.

47. Assuming that the word "railway" is not incorporated in the Act, 1947 and for that reason, the definition of "railway" in Act, 1989 cannot be looked into, even then, the definition of "railway company" as found in Section 3(5) of the Act, 1890, which is incorporated in Section 2(o) of the Act, 1947 is enough to conclude that BMRCL is a "Railway company" for the reasons already discussed *supra*.

48. Referring to the definition of Section 2(31) of Act, 1989 it is urged that Section 2(31)(i) excludes tramway within the municipal area and urged that Metro which is similar to tramway stands excluded from the definition of railway.

49. The relevant portion of Section 2(31) of the Act, 1989 reads as under:

> *"**railway"** means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—*

(a) xxx;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) xxx;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) xxx

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;"

50. Tramway is different from metro rail. Added to that "tramway" which is excluded from the definition of "railway" is the tramway in Municipal area. There is no difficulty in holding that the municipal area and

metropolitan area or corporation area have different connotations under law. Section 2(31) of Act, 1989 is quite wide to include all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway. What is specifically excluded in Section 2(31)(i) is "tramway" in municipal area. It is to be noticed in the year 1978 itself the law relating to metro rail was in place and Act, 1989, while excluding "tramway" from the definition of "railway" does not exclude the metro railway.

51. Sub-section (2) of Section 2 of the Act, 1978 reads as under:

> *"All other words and expressions used herein and not defined, but defined in the Indian Railways Act, 1890 (9 of 1890), shall have the meanings respectively assigned to them in that Act."*

52. From the aforementioned provision, it is evident that expressions and words which are used and not defined in the Act, 1978 shall have the same meanings as assigned to them in the Indian Railways Act, 1890.

53. Sub-section (2) of Section 2 of the Act, 2002 reads as under:

> *"All other words and expressions used herein and not defined, but defined in the Metro Railways (Construction of Works) Act, 1978, (33 of 78) shall have the meanings respectively assigned to them in that Act."*

54. From the aforementioned provision, it is evident that expressions and words which are used and not defined in the Act, 2002 shall have the same meanings as assigned to them in the Act, 1978. As already noticed, Act, 1978 refers to Act, 1890. Act, 1890 does define the term "railway company."

55. The *relevant portion* of definition of "metro railway" as provided under Section 2(1)(i) of Act,1978 and as provided in Section 3(4) of the Act, 1890 are extracted below for easy comparison:

Section 2(1)(i) – Metro Railways (Construction of Works) Act, 1978	Section 3(4) – Indian Railways Act, 1890
"metro railway" means a metro railway or any portion thereof for the public carriage of passengers, animals or goods and includes,—	"railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes,—
(a) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway;	(a) all land within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
(b) all lines of rails, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway;	(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(emphasis supplied)

56. On comparison of the aforementioned definition of "metro railway" and "railway" as defined in Act, 2002 and Act, 1890 respectively, the Court is of the view that the definition though varies at some places, Clause (b) in both definitions in essence would be the same when it comes to the railway tracks, as expression "all lines of rails" are used in both definitions. Thus, even if the definition of "Railway Company" is not included under the

Act, 2002, it does not take metro railway out of the ambit of Railway Company as defined in Section 2(o) of the Act, 1947.

57. The contention that BMRCL is a company registered under the Act, 1956 and does not come under the definition of railway company is also not supported by any provision of law. At this juncture, it is also relevant to notice the Memorandum of Association of BMRCL. The relevant portion of the objects of the company enumerated in paragraph (A) 1 and 2 are as under:

1. *To establish, operate and maintain a Rapid Rail Transit system by the construction of circular or other type of railway lines in and around Bengaluru City so as to meet the urban transport needs of Bangalore.*
2. *To carry on the business of railway transport, carriers of passengers, by rail and to generally carry on all businesses relating to a Railway Company (as defined in the Indian Railways Act, 1890 as amended from time to time or equivalent new definition of a Railway Company, or any new*

amended Act which may come into force), including but not limited to:-

(emphasis supplied)

58. Even the Memorandum of Association of BMRCL refers to the definition of the Railway company as defined in the Act,1890. As already noticed, the definition of "Railway company" in Act,1890 and in Act, 1947 includes the *party working a railway*. Thus, BMRCL though a company registered under the Act,1956 is a party working a railway in terms of the Memorandum of Understanding as already discussed above. Thus, BMRCL is indeed a "Railway company" as per Section 2(a)(i) and 2(o) of the Act, 1947.

59. It is to be noticed that BMRCL which came into existence in the year 2005 pursuant to registration under the Act, 1956 makes a reference to the definition of 'railway company' as defined in Act, 1890. It is to be noticed that when the company was registered in 2005,

the Act, 1890 was repealed by the Act, 1989. Nevertheless, the Memorandum of Association makes reference to the definition of a 'railway company' as defined in Act, 1890. The Memorandum of Association is a private contract among the shareholders of the company which has to be in conformity with the provisions of the Act, 1956 and the Rules made thereunder. There is no provision of law which prohibits the parties to the contract to incorporate the definition used in any enactment either repealed or in force. Thus, the reference to the expression 'railway company' found in the Act, 1890 in the Memorandum of Association of BMRCL is permissible and that being the position, it has to be understood that BMRCL understood the definition of "railway company" as defined in the Act, 1890.

60. Now the Court has to consider the expression "Appropriate Government" with reference to enactments relevant for discussion.

61. The Act, 1970 defines the expression 'appropriate Government'. The definition of 'appropriate Government' as found in Section 2(1)(a) reads as under:

> ***"2(1)(a) "appropriate government"*** *means,-*
>
> *(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;*
>
> *(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;"*

62. The definition of the appropriate Government in the Act, 1970 provides that the *"appropriate Government"* in relation to an establishment in respect of which the Appropriate Government under the Act, 1947 is the Central Government, the Central Government. Since, BMRCL is a "Railway company" under Section 2(o) of Act,

1947 for BMRCL the appropriate government would be the Central Government.

Whether the State Government under Section 2(n)(vi) of the Industrial Disputes Act, 1947 can notify the services of Bangalore Metro Rail Corporation Ltd as Public Utility Service

63. Writ Petition No.197/2020 is filed by the Union challenging the Notification dated 18.11.2019 issued under Section 2(n)(vi) of the Act, 1947 as public utility service. Entry 1 of First Schedule to Act, 1947 reads as under.

Relevant portion of Section 2(n) of Act,1947 reads as under

2(n) " Public utility service" means-

i. Any railway service or any transport service for the carriage of passengers or goods by air

ii. xxx

(vi) Any industry specified in the first schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires by notification in the Official Gazette declared to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.xxx

64. The first entry in the First Schedule in the Act, 1947 reads as under:

> *'1. Transport* ***(other than railways)*** *for the carriage of passengers or goods by land or water'.*
>
> (emphasis supplied)

First schedule to the Act, 1947 does not include railway. Rather, it specifically excludes railway.

65. Section 2(n)(vi) provides that appropriate Government may, if satisfied that public interest so requires notify public utility service in respect of an industry specified in the First Schedule. Since 'appropriate Government' for BMRCL, is the Central Government, the State Government has no power to issue Notification in respect of Railway.

66. To issue notification under Section 2(n)(vi) of Act, 1947, in respect of any industry specified in the First

Schedule, the Government issuing the notification must be the 'appropriate Government' for that industry. Since State Government is not the appropriate Government for BMRCL the Notification dated 18.11.2019 at No.Ka.e.139.LWV.2017 at Annexure–L issued by the State Government is without jurisdiction and has to be quashed.

Whether the State Government under Section 2 (1) of the Karnataka Essential Services Maintenance Act, 2013, can notify the services of Bangalore Metro Rail Corporation Ltd as *essential service*?

67. Writ Petition No.44263/2017 is filed by the petitioner-Union assailing the Notification dated 07.07.2017 under the Karnataka Essential Services Maintenance Act, 2013. The definition of Essential service under Section 2 of the Karnataka Essential Services Maintenance Act, 2013 (Act, 2013) reads as under.

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

(a) "essential service" means,-

(i) any service connected with production, generation, storage, transmission, supply or distribution, as the case may be, of water or electricity;

(ii) any transport service for the carriage of passengers or goods by motor vehicles.

Explanation .- For the purpose of this clause, the expression "motor vehicle" shall have the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

(iii) any other service or employment or class thereof connected with any matter with respect to which the State Legislature has power to make laws under List II of the Seventh Schedule to the Constitution and which the Government being of the opinion that refusal to work therein would prejudicially affect the maintenance of any public utility services or the public safety or the maintenance of supplies and service necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification, declare to be an essential service for the purpose of this Act;"

(emphasis supplied)

68. Definition of Motor Vehicle in Act, 1988 (Act, 1988) under Section 2(28) reads as under:

"Section 2 (28) motor vehicle or vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted

thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; ***but does not include a vehicle running upon fixed rails*** *or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimeters]."*

(emphasis supplied)

69. Thus, under the Act, 2013, read with Section 2(28) of Act, 1988 transport by railway/metro railway is excluded under Section 2 of the Act, 2013.

70. Section 2(1)(a)(iii) of the Act, 2013 provides that the State Government may issue Notification under Section 2(1)(a)(iii), if the Government is of the opinion that it is necessary considering the circumstances mentioned in the provision. However, the power conferred is only in respect of subjects enumerated in *List II of Seventh Schedule of the Constitution of India*. Metro railway or Railway is not in List II of Seventh Schedule.

71. Thus, the State Government is not competent to issue Notification dated 07.07.2017 at No. Na.Aa.E/287/CRJ/2017 marked at Annexure - C under the Karnataka Essential Services Maintenance Act, 2013 in respect of services of BMRCL.

72. Learned counsel appearing for respondent/State and BMRCL heavily relied on the judgments of the Division Bench of this Court in ***Samuel Sathyasheelan vs Union of India***[4] and also the judgment of the Madras High Court in ***CMRL Employees Union,*** *supra*.

73. It is required to be noticed that in **Logwell Forge Limited** supra of this Court, was not called upon to decide as to which is the Appropriate Government for an establishment in relation to industrial dispute under the Act, 1947. The Court was dealing with the question as to whether the BMRCL would come under the purview of the

[4] W.P.No.48094/2012

Karnataka Transparency in Public Procurement Act, 1999 and the Court has held that BMRCL would come under the purview of the Karnataka Transparency in Public Procurement Act, 1999.

74. The judgment does not discuss the provisions of Act, 1947, Act, 1890, Act, 1946, Act, 1970 and Act, 1996 which have a bearing on these cases. Apart from that, when the case in ***Logwell*** supra was decided, BMRCL was not brought under the purview of Act, 1978 and Act, 2002 and BMRCL came under the purview of these Acts with effect from 16.10.2009.

75. In addition, the Court was not deciding the lis between the Central Government and the State Government. Hence the said judgment does not apply to the facts of these petitions.

76. As far as the judgment in Madras High Court in ***CMRL Employees Union*** supra, with due respect, this

Court is not persuaded to follow the said judgment, for the following two reasons:

(i) The Court has not noticed that despite repeal of Act, 1890 in terms of Act, 1989, the definition of 'railway company' as defined in Section 3(5) of Act, 1890, which is incorporated by reference in Section 2(o) of the Act, 1947 is very much in existence in said Section 2(o); and

(ii) The Court has also proceeded on the wrong footing that the Act, 1978 and Act, 2002 are special enactments prevailing over Act, 1947 ignoring the binding precedent of the Apex Court in ***Life Insurance Corporation of India V. D.J Bahadur and others*** [5]

77. The contention that Act, 1978 and Act, 2002 being special enactments would override the Act, 1947 has no merit. The Act, 1978 and Act, 2002 do not prohibit the

[5] 1981 (1) SCC 315

metro railway construction activity, or the operation, maintenance activity by the industrial establishments governed by the Act, 1947. Thus, in case of an industrial dispute concerning metro railway, such disputes if covered under the Act, 1947 will have to be adjudicated as provided under the Act, 1947.

78. Once, the Act, 1947 is held to be applicable, then the Railway company has to be understood with reference to Section 2(o) of Act, 1947 which in turn refers to the definition of railway company as found in Section 3(5) of Act, 1890. In that view of the matter, there has to be an Appropriate Government for BMRCL as well and same has to be decided with reference to Act, 1947. Thus, the contention that the Act, 1978 and Act, 2002 being special enactments override the provisions of Act, 1947 cannot be accepted.

79. The contention that the State Government has control over the matters relating to acquisition of land and maintenance and operation do not confer the State Government the primacy over the Central Government when it comes to key decisions in establishing, running and maintaining the metro railway cannot be accepted as the provisions of law in the Act, 1978 and Act, 2002 catalogued above reveal pervasive control of the Central Government.

80. Sri Santosh Gogi, learned Additional Advocate General for respondent/State has also referred to Section 2(f) and 2(l) of Act, 2002 to substantiate the contention that there are two different kinds of metro railways viz., (a) Government metro railway as defined under Section 2(f) and (l) non-Government metro railway which is other than Government metro railway.

81. These two definitions which recognize the Government owned metro railway and a non-Government metro railway (private railway) do not come to the aid of the State to contend that the Central Government is not the appropriate Government for BMRCL.

82. More than anything else, Act, 2002 and Section 2(p) defines "railway" by incorporating definition as found in Section 2 of Act, 1989. This being the position, the railway as defined in Act, 1989 as already noticed is a wide definition that includes the rail lines of metro railway as metro railway runs on a track.

83. For the aforementioned reasons, this Court is of the view that BMRCL is predominantly carried by the authority of the Central Government and it is a 'Railway company' as defined in Section 2(o) of Act, 1947.

84. For the aforementioned reasons, this Court is of the view that the Central Government is the 'appropriate Government' for BMRCL.

85. The petitioner - Union in Writ Petition No.40113/2007 has assailed the BMRCL Employees (Conduct, Discipline and Appeal) Rules, 2014 on the premise that the same could not have been certified by the authorities under the State Government. Hence, same is quashed.

86. The State Government-5th respondent is restrained from granting any exemption under Section 14 of the Industrial Employment (Standing Orders) Act, 1946 to 1st respondent-Company from the provisions of Industrial Employment (Standing Orders) Act, 1946.

87. Writ Petition No.31611/2019 is filed by BMRCL assailing the reference order dated 04.12.2018 at No.L-42011-146-2018-IR(DU) marked at Annexure – F on the

premise that the Office of the Central Government has no jurisdiction to refer the dispute to the Central Government Industrial Tribunal. Since, the Central Government is the 'appropriate authority', the order of reference is by the competent authority.

88. Writ Petition No.52329/2019 is filed by BMRCL assailing the order dated 13.09.2019 at No.8(38)2019-B3, marked at Annexure – F, passed by 1st respondent - Conciliation Officer of the Central Government under the Industrial Disputes Act, 1947 declaring 12 office bearers of BMRCL as protected workman for the year 2019-20. Since, the Central Government is the 'appropriate Government', said order dated 13.09.2019 for the year 2019-20 was validly passed.

89. Writ Petition No.6697/2022 is filed by BMRCL assailing the order dated 10.02.2022 at No.8(71)/2021-B3, marked at Annexure – K, passed by 1st respondent-

Conciliation Officer of the Central Government under the Industrial Disputes Act, 1947, declaring 12 office bearers of BMRCL as protected workmen for the year 2021-22. Since, the Central Government is the 'appropriate Government', said order dated 10.02.2022 for the year 2021-22 was validly passed.

90. In W.P. No.40113/2017 the second prayer is to direct prosecution against the respondents. Said prayer is not seriously urged during hearing and the Court is of the view that no ground is made out to initiate prosecution against officers of BMRCL as prayed in prayer (b) in the Writ Petition No.40113/2017.

91. **Conclusion:**

(a) The Bangalore Metro Rail Corporation Limited is a Railway company within the meaning of "Railway company" as defined in Section 2(a)(i) r/w Section 2(o) of the Industrial Dispute Act, 1947.

(b) Under Section 2(n)(vi) of the Industrial Disputes Act, 1947, the State Government has no competence to notify the services of Bangalore Metro Rail Corporation Ltd as Public Utility Service.

(c) Under Section 2(1) of the Karnataka Essential Services Maintenance Act, 2013, the State Government has no competence to notify the services of Bangalore Metro Rail Corporation Ltd as essential service

92. Hence the following:

ORDER

(i) Writ Petition No.40113/2017 is ***allowed-in-part***.

(a) The Bangalore Metro Rail Corporation Limited Employees (Conduct, Discipline and Appeal) Rules, 2014 is quashed.

(b) The State Government/5th respondent is restrained from granting any exemption under Section 14 of the Industrial Employment (Standing Orders) Act, 1946 to 1st respondent-Company from the application of the provisions of Industrial Employment (Standing Orders) Act, 1946.

(ii) Writ Petition No.44263/2017 is ***allowed***.

(a) Notification dated 07.07.2017 at No.Na.Aa.E/287/CRJ/2017 marked at Annexure - C issued under the Karnataka Essential Services Maintenance Act, 2013 in respect of services of 3rd respondent-Company is quashed.

(iii) Writ Petition No.31611/2019 is ***dismissed***.

(a) The order dated 04.12.2018 at No.L-42011-146-2018-IR(DU) marked at

Annexure – F is issued by the appropriate Government (Central Government).

(b) The Central Government Industrial Tribunal shall proceed to adjudicate the reference.

(iv) Writ Petition No.52329/2019 is ***dismissed***.

(v) Writ Petition No.197/2020 is ***allowed***.

(a) The notification No. Ka.e.139.LWV. 2019 dated 18.11.2019 at Annexure – L, issued under Section 2(n) of Industrial Disputes Act, 1947, declaring the services of the Bangalore Metro Railway Corporation Limited as public utility services by respondent No.1 – the authority under the State Government is without jurisdiction and accordingly quashed, as Central Government is the 'appropriate

Government' for Bangalore Metro Railway Corporation Limited.

(vi) Writ Petition No.6697/2022 is ***dismissed***.

(vii) In so far as the Writ Petitions which are ***allowed-in-part***, the reliefs which are not specifically granted are rejected.

(viii) No order as to cost.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

Brn
LIST NO.: 19 SL NO.: 1