Questions:

1. Does the court dispose convincingly of the Tribunal's statement that the Association represented all its members pursuant to Section 36(2)? How?

2. Did the court dispose convincingly of *P. G. Walter* v. *Chief Secretary?*

3. What proof did the court rely on in concluding that there was no dispute between the Union and all the members of the Association?

4. Who has the burden of proof of the existence of an industrial dispute?

D. Settlement Machinery

1. *Works Committees*

The Works Committee was introduced into India, for the first time, by the Industrial Disputes Act, 1947 to try to promote good industrial relations and to reconcile differences between the workers and the management. Section 3 authorises the "appropriate government' to require any employer having a hundred or more workers to set up such a committee. Such committee is to consist of an equal number of representatives of labour and management. Where the appropriate government is the Central Government, the workers' representatives are to be elected in such a manner that all categories, groups, and classes of workmen engaged in various sections, shops, or departments get representation[1]; the repre sentatives to be nominated by the Company similarly are to be selected in accordance with the rules,[2] and must be officials in direct touch with or associated with the working of the establishment.[3]

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1. Rule 39, Industrial Disputes (Central) Rules, 1957.
2. Rules 38 to 57 of the Industrial Disputes (Central) Rules, 1957.
3. Rule 40, Industrial Disputes (Central) Rules, 1957.

NORTHBROOK JUTE COMPANY v THEIR WORKMEN

Supreme Court, (1960) I L.L.J. 580

[The Company proposed to introduce a rationalisation scheme, to which the Union did not agree. The Works Committee met in extra-ordinary session and considered and accepted the Company's proposal. The Company gave notice under Section 9A of the Act of changes in service conditions to correspond with the scheme as thus accepted.

The Union raised an industrial dispute. Thereafter the Company implemented the scheme. The workers refused to do the additional work it required. The Company declared a lockout. Four days later, a settlement was reached between the Union and the Company concerning the rationalisation scheme. The parties could not agree, however, concerning the payment of wages for the lockout period. This dispute was referred for adjudication. The Industrial Tribunal held that the Company's implementing the rationalisation scheme in reliance on the decision of the Works Committee, while a dispute was pending, was in contravention of Section 33 of the Act. Hence, the lockout declared by the Company was illegal. The workers must be paid wages for that period. The Company applied for and obtained special leave from the Supreme Court. The judgment, delivered by Das Gupta, J., follows:]

Language used by the legislature makes it clear that the Works Committee was not intended to supplant or supersede the unions for the purpose of collective bargaining; they are not authorised to consider real or substantial changes in the conditions of service; their task is only to smooth away friction that might arise between the workmen and the management in day to day work. By no stretch of imagination can it be said that the duties and functions of the Works Committee included the decision on such an important matter as the alteration in the conditions of service by rationalisation. To promote measures for securing and preserving amity and good relations between the employer and workmen is their real function and to that end they are authorised to comment upon matters of their common concern or interest and endeavour to compose any material differences of opinion in respect of such matters. The question of introduction of a rationalisation scheme may be said to be a matter of common interest between the employers and workmen; but the duty and authority of the works committee could not extend to anything more than making comments thereupon and to endeavour to compose any material difference of opinion in respect of such matters. Neither "comments" nor the "endeavour" could be held to extend to deciding the question on which differences have arisen or

are likely [to arise] one way or the other. It was rightly pointed out by the Labour Appellate Tribunal in *Kemp & Co. Ltd.* v. *Their Workmen* (1955) I L.L.J. 48 at 53 that:

> the works committees are normally concerned with problems arising in the day to day working of the concern and the functions of the works committees are to ascertain the grievances of the employees and when occasion arises to arrive at some agreement also. But the function and the responsibility of the works committees as their very nomenclature indicates cannot go beyond recommendation and as such they are more or less bodies who in the first instance endeavour to compose the differences and the final decision rests with the union as a whole.

The fact that the workmen's representatives on the works committee agreed to the introduction of the rationalisation scheme therefore is in no way binding on the workmen or their union. [The appeal was, accordingly, dismissed.]

NOTES

1. In *Bombay Gas Company* v. *Their Workmen,* (1950) L.L.J. 705 (I.T.), the Union demanded that the right of officials of the Union to attend the meetings of the Works Committee in an advisory capacity be recognized, and that the agenda and minutes of the meetings be sent to the Union. This was an analogy to a provision in the *Bombay Industrial Relations Act* respecting joint committees which provides that "a representative of the registered trade union may attend any meeting of the joint committee to advise the members representing the employees." The Industrial Tribunal, Bombay, held that the circumstances under which joint committees were formed were different from those relating to formation of Works Committees. The Tribunal pointed out that rule 48 (at present 54) of the Central Rules provides that the Works Committee shall have the right to coopt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion. But it nevertheless rejected the demand of the Union to participate in the meetings of the Works Committees and to receive the agenda and minutes of meetings as a matter of right.

2. In *Elgin Mills Co. Ltd.* v. *Suti Mills Mazdoor Union, Kanpur,* (1951) I L.L.J. 184 (L.A.T.) Panna Lal, a clerk in the Mill, was dismissed. The union raised an industrial dispute. A Board of Conciliation, established for the dispute, dismissed the Union's application on

the ground that Panna Lal had not in the first instance approached the Works Committee. The Union appealed. The Industrial Court held that there was no bar to the entertainment of the dispute by the Board of Conciliation. The Tribunal ordered the reinstatement of Panna Lal. The Company appealed. The Labour Appellate Tribunal held that the subject of "employment or non-employment" which would include the case of dismissal was not within the province of the Works Committee, and that the bar imposed by the Board of Conciliation could be valid only if consideration of the dispute fell within the province of the Works Committee. The appeal was dismissed.

3. In *Metal Box Company of India* v. *Their Workmen,* (1952) I L.L.J. 822 (L.A.T.), the Works Committee had accepted an offer of management to declare a bonus for the year 1949-1950 of 17 per cent of basic wages to the daily rated workmen and of 15 per cent to the monthly rated workmen. In April 1950 another agreement was reached between the management and the Works Committee regarding certain other matters, including a gratuity scheme. In July 1950, the National Engineering Workers' Union made certain demands, which were referred to the Industrial Tribunal. The Tribunal pointed out that members of the Works Committee must be regarded as representatives of the workmen and so more intimately in touch with their interest and desires than the union which includes members of other companies. The Tribunal held that the settlement arrived at between the Works Committee and the management was entered into by a body representing the workmen. The Company appealed. The Labour Appellate Tribunal affirmed. It discussed the duties of the Works Committee and pointed out that there is no subject which the Works Committee cannot consider, and further, that agreed solutions between the Works Committee and the management are always entitled to great weight and should not be readily disturbed, particularly in matters like classification, grades, and scales of pay which are peculiarly within the knowledge of the members of the Works Committee.

4. Effectiveness or ineffectiveness of Works Committees: Have the benefits expected and hoped for from Works Committees actually materialized? The "Report to the Government of India on Labour Management Relations and some Aspects of Wages Policy" by the International Labour Organization, in 1959, says, at page 49-50,

> Large numbers of Works Committees proved in practice to be ineffective. In Uttar Pradesh the State Government abolished them for the reason that they failed in solving differences and in promot-

ing harmonious relations. In other states also, though at a few establishments they were fairly successful, the usual experience was that they were of little practical use and large numbers ceased to meet. This was true largely in private undertakings. In public sector undertakings some beneficial results have been obtained in dealing with grievances but the results have fallen far short of expectations. In the public sector (central), on 30 September 1958, the number of undertakings in which Works Committees had been set up was 701 out of a total 1,122 undertakings. Lack of co-operation from trade unions and rivalry between trade unions were the main causes preventing the establishment of Works Committees at the other undertakings. The causes of many of the failures whether in the public or private sectors include apathy or disapproval by managements, opposition from trade unions or rivalry between them, uncertainties because the subjects which could be discussed had not been clearly laid down, and dissatisfaction by workers and their representatives with results, as, being advisory, the managements frequently did little to implement the recommendations, except on trivial matters. Often trade unions were hostile as they feared that if Works Committees were successful they would become rivals of the unions. The Committees mainly concentrated on grievances and few constructive results were obtained. The difficult economic and industrial conditions during the initial years of the experiment was a factor which reduced the chances of success and led to Works Committees being discredited at many undertakings.

Has the effectiveness of Works Committees improved since this bleak picture was drawn in 1959? See V. G. Mhetras, Labour Participation in Management 34-38 (1966).

2. *Conciliation*

In India, though the accent is on compulsory adjudication, the Industrial Disputes Act provides for other modes of settlement also. These include conciliation, usually by a conciliation officer but possibly by a board of several conciliators. Conciliators either bring the contending parties to a conference table or try at least to bridge the barriers to communication between them. They try to remove the sources of tension and friction and to help the parties to find common areas of agreement. They have no power to decide, but by gaining the parties' confidence in the conciliators' fairness and impartiality they strive to find solutions the parties may be unable to find for themselves.

This technique has worked well in many industrialised countries. It is said to have worked particularly well in Sweden, where the contending parties meet in a spirit of determination to agree, and where they consider failure to agree almost a disgrace.[1]

In India, unfortunately, conciliation has had no such remarkable success. This may be primarily because a failure of conciliation is likely to lead to adjudication by a tribunal, or a reference to some other agencies under the Act.[2] Knowing this, the parties do not feel compulsion to agree at the conciliation stage. What should be the end of their dispute they think of as its beginning.

A board of conciliation has been turned to where the issues were especially complex;[3] but it is said that no board has been appointed by the Central Government "in recent years".[4] Except as specifically noted hereafter a board of conciliation acts in much the same way as does a single conciliation officer.

The appropriate Government may appoint individual conciliation officers, temporarily or permanently, either for a specified industry or for a specified area.[5] A board, on the other hand, has to be appointed *ad hoc* for a particular dispute. Such a board consists of a chairman and two or four other members. The chairman must be an independent person; the members represent the parties in equal numbers and are usually appointed on a party's recommendation.[6]

A conciliation officer must investigate and try to settle a dispute whenever a dispute exists or is apprehended in a public-utility service and a notice of strike or lockout has been given. In other cases he has discretion on whether to act or not.[7] When he acts, he must do so expeditiously and take all steps possible to induce a settlement. If the dispute involves a notice of strike or lockout in a public-utility service, rules specifically require the conciliator to interview the employer and

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1. See *Foenander, Industrial Conciliation and Arbitration in Australia* 95 (1959).
2. Section 12(5) of the Industrial Disputes Act, 1947.
3. Sections 4 and 5.
4. Seth, Commentary on the Industrial Disputes Act, 1947 (1966) Part I at 169.
5. Section 4.
6. Section 5.
7. Section 12.

the workmen in his effort to induce a settlement.[8] Probably he should do so in every case, so far as possible. And in every case in which he decides to act, he has to notify the parties of the date on which he will hold the proceedings.[9]

He can meet the representatives of the parties jointly or separately.[10] This, like most of his decisions, is a point requiring the utmost in tact and judgment. If he wins the parties' confidence they will often reveal to him in private sessions, and in confidence, concessions they would not dare to mention in the presence of the other side. Armed with such information from both sides he can sometimes propose later, in a joint meeting, compromises containing such private concessions, as if they were the conciliator's own independent suggestions.

Reports of successful settlement, or of failure, have to be sent by the conciliation officer[11] (or a board)[12] to the appropriate Government. A report of a settlement must contain a memorandum of the settlement signed by the parties. A report of a failure must set forth the steps taken and the probable reasons for the failure. (A board is required, in addition, to give its findings on fact and its recommendations for the determination of the dispute). It must be noted that conciliators can only send a report; they have no authority to pass a final order.[13]

The conciliation officer's report must be sent within two weeks of the beginning of the conciliation proceedings; a board's report, within two months. The appropriate government can extend these times, or can shorten them.[14] A failure to send a report within the prescribed time does not invalidate the proceedings.[15]

Conciliation proceedings commence when the conciliation officer receives a notice of strike or lockout (or when the appropriate Government

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8. Rules 9 and 10 of the Industrial Disputes (Central) Rules, 1957.
9. *Ibid.*
10. Rule 11.
11. Section 12.
12. Section 13.
13. Sasmusa Sugar Works Ltd. v. Bihar, A.I.R. 1955 Patna 49; [1954-55] 7 F.J.R. 56.
14. Sections 12 and 13.
15. *Andheri Marol Kurla Bus Service* v. *State of Bombay,* (1959) II L.L.J. 236; [1959-60] 16 F.J.R. 172; A.I.R. 1959 S.C. 841; *State of Bihar* v. *Kirpa Shankar Jaiswar,* 321; (1961) I L.L.J. 334; A.I.R. 1961 S.C. 340.

refers the dispute to a board). In other cases they commence, presumably, from the date the conciliation officer holds proceedings. The proceedings conclude on the signing of a memorandum of settlement by the parties, or (in the all-too-frequent event of failure) on the receipt of the conciliator's failure report by the appropriate Government. They also conclude on reference of the dispute to a court, labour court, tribunal, or national tribunal during the pendency of the conciliation proceedings.[16]

A conciliation officer can, on notice, enter and inspect the premises of the business, question individuals, and obtain documents.[17] (A board's powers of investigation are even broader, similar to those of a court;[18] the board's proceedings are judicial.)

The proceedings before the conciliation officer are purely administrative. He is not bound by the principles of natural justice,[19] and the proceedings before him are not amenable to certiorari.[20]

On receipt of a failure report, the appropriate Government may, if satisfied that there is a case requiring further action, refer the dispute to a board, labour court, tribunal, or national tribunal. If it decides not to make any such reference, it must record and communicate to the parties the reasons therefor.[21] (On a failure report by a board, the appropriate Government need thus record and communicate its reasons for nonaction only when the dispute relates to a public-utility service.)[22]

A settlement arrived at in the course of conciliation proceedings is binding on all the parties to the dispute and other persons properly summoned to appear as parties to the conciliation, including the heirs, successors or assigns of any employer, and all employees at the date of the dispute and those subsequently employed. A settlement arrived at without the concurrence of the conciliation officer (or board) or not approved by him (or by the board) is binding on the parties to the settlement only.[23]

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16. Section 20.

17. Section 11 and Rule 23.

18. Section 11.

19. Royal Calcutta Golf Club Mazdoor Union v. State, A.I.R. 1956 Cal. 550.

20. The Employees in the Caltex (India) Ltd. Madras v. The Commissioner of Labour and Conciliation Officer, Government of Madras, A.I.R. 1950 Mad. 441.

21. Section 12.

22. Section 13.

23. Section 18(3); Section 18(1).

During the pendency of conciliation proceedings the employer cannot alter conditions of service prevailing just before the commencement of the proceedings, to the workmen's prejudice, without the express permission of the authority concerned.[24]

During the pendency of conciliation proceedings in a dispute in a public-utility service, or before a board in any dispute,[25] a strike or lock-out is prohibited. A strike or lockout is also prohibited for seven days after the conclusion of conciliation proceedings.[26] Any strike or lockout in contravention of these rules is punishable.[27] These rules, while obviously useful for keeping the peace, strongly colour the conciliation process. Without them conciliation might be simple assistance to free collective bargaining. With them conciliation means that government has already intervened to ban the use of the weapons which make collective bargaining effective.

3. *Voluntary Arbitration*

The Industrial Dispute Act, as noted above under conciliation, seeks to secure and ensure industrial peace, mainly through compulsory adjudication. Therefore it predicates the operation of its scheme of settlement on compulsory state-intervention as final arbiter.

A somewhat similar scheme of settlement operating in Australia was severely criticized, as early as 1929, by a British Economic Commission in that it tended to consolidate the contesting parties into two opposing camps.[1] The I.L.O. gave renewed emphasis to such criticism. In 1951 it recommended voluntary arbitration as a better mode of settlement.[2] These and similar criticisms may have had some influence upon Indian opinion.

In order, perhaps, to help give effect to this preference, Section 10A was added to the Act by the amendment of 1956. That section says that at any time before a reference of a dispute under Section 10, the disputants

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24. Section 33.

25. Section 22; Section 23(a).

26. Section 23.

27. Sections 24 and 26.

1. See R. F. RUSTAMJI, THE LAW OF INDUSTRIAL DISPUTES IN INDIA, 484-85 (2d ed. 1964).

2. *International Labour Organization Conventions and Recommendations* 804 (1919-1966).

may, by a written agreement, refer the dispute to arbitration. They may specify their own arbitrator. (He can, but need not be, the presiding officer of a labour court or tribunal.) Or they may select a board of arbitrators, with provision for appointment of an impartial chairman, if needed.

The written agreement setting forth the issue or issues to be arbitrated must be sent to the conciliation officer and to the appropriate Government. That Government may, in cases where the signatories to the written agreement represent the majority of each party, within one month issue a notification that other employers and workers concerned will be given an opportunity to present their case, also, in the arbitration.[3]

In cases where such a notification has been issued, the appropriate Government can prohibit the continuance of strike or lockout which was in existence at the time of the reference.[4] And in such cases the arbitral award is binding on the parties and also on all the others properly summoned.[5] In cases where no notification has been issued to others, the award becomes binding upon the parties who signed the agreement and upon them only.[6]

Note the difference between Section 10A and Section 10(2). Under 10A the parties refer to arbitration, whereas under 10(2) they request the appropriate Government to refer the dispute to an appropriate authority for adjudication. That Government must do so if satisfied that the persons applying represent the majority.[7]

During the pendency of arbitration proceedings the employer is enjoined from altering the conditions of service to the prejudice of the workers.[8] But the special provision for adjudication on whether service conditions have been thus changed is not applicable to proceedings before an arbitrator.[9]

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3. Section 10-A(3A). This sub-section was added by the Industrial Disputes (Amendment) Act, 36 of 1964.

4. Section 10-A(4A), also added in 1964.

5. Section 18(3).

6. Section 18(2).

7. See Engineering Mazdoor Sabha v. Hind Cycles, (1962) II L.L.J. 760 (S.C.)

8. Section 33.

9. Section 33A.

Though arbitration under Section 10A is described as voluntary, much room is provided for State-intervention. The award of the voluntary arbitrator must be communicated to the appropriate Government and not to the parties. In fact, the efficacy of arbitration is largely buttressed by reliance upon State-intervention.

This method of settlement does not appear to have much attraction for Indian industry.[10] It is rarely resorted to.[11]

ENGINEERING MAZDOOR SABHA v HIND CYCLES LTD.

Supreme Court, (1962) II L.L.J. 760

[This decision involved three appeals from the awards of two arbitrators appointed under Section 10-A of the Industrial Disputes Act. Engineering Mazdoor Sabha appealed from two of these awards; Direct Tea Trading Company, from the third. The Court had to decide a preliminary objection, that arbitrators appointed by the parties were not tribunals, and that therefore no appeal could lie under Article 136 against their awards. The respondents maintained that such an appeal was not proper. The judgment of the Court, delivered by Gajendragadkar, J., follows:]

Article 136(1) provides that notwithstanding anything in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. It is significant that whereas Arts. 133(1) and 134(1) provide for appeals to this Court against judgments, decrees or final orders passed by the High Courts, no such limitation is prescribed by Art. 136(1). All courts and all tribunals in the territory of India except those in Cl. (2) [constituted by a law relating to the Armed Forces] are subject to the Appellate jurisdiction of this Court under Art. 136(1). It is also clear that whereas the appellate jurisdiction of the court under Art. 133(1) can be invoked only against final orders no such limitation is imposed by Art. 136(1). In other words, the appellate jurisdiction of this court under this latter provision can be exercised even against an interlocutory order or decision. Causes or matters covered by Art. 136(1) are all causes and matters that are brought for adjudication before courts or tribunals. The sweep of this provision is thus very wide. It is true that in exercising its powers

10. MARY SUR, *Collective Bargaining* 86 (1965).

11. RUSTAMJI, *supra* n. 1 at 485.

under this article, this Court in its discretion refuses to entertain applications for special leave where it appears to the Court that interference with the orders sought to be appealed against may not be necessary in the interest of justice. But the limitations thus introduced, in practice, are the limitations imposed by the Court itself in its discretion. They are not prescribed by Art. 136(1).

For invoking Art. 136(1) two conditions must be satisfied. The proposed appeal must be from any judgment, decree, determinition, sentence, or order, that is to say, it must not be against a purely executive or administrative order. If the determination or order giving rise to the appeal is a judicial or quasi-judicial determination or order, the first condition is satisfied. The second condition imposed by the article is that the said determination or order must have been made or passed by any court or tribunal in the territory of India. Courts of law established by the State decide cases brought before them judicially and the decisions thus recorded by them fall obviously under the category of judicial decisions. Administrative or executive bodies, on the other hand, are often called upon to reach decisions in several matters in a purely administrative or executive manner and these decisions fall clearly under the category of administrative or executive orders. Even Judges have in certain matters to act administratively, while administrative or executive authorities may have to act quasi-judicially in dealing with some matters entrusted to their jurisdiction. Where an authority is required to act judicially either by an express provision of the statute under which it acts or by necessary implication of the said statute, the decisions of such an authority generally amount to quasi-judicial decisions. Where, however, the executive or administrative bodies are not required to act judicially and are competent to deal with issues referred to them administratively, their conclusions cannot be treated as quasi-judicial conclusions. No doubt even while acting administratively, the authorities must act bona fide, but that is different from saying that they must act judicially. Bearing in mind this broad distinction between acts or orders which are judicial or quasi judicial on the one hand and administrative or executive acts on the other there is no difficulty in holding that the decisions of the arbitrators to whom industrial disputes are voluntarily referred under S. 10-A of the Act are quasi-judicial decisions, and they amount to determinations or orders under Art. 136(1). The position is not seriously disputed before us. What is in dispute between the parties is not the character of the decisions against which the appeals have been filed, but it is the character of the authority which decided the disputes. The respondents contended that the arbitrators whose awards

are challenged, are not tribunals, whereas the appellants contend that they are.

Article 136(1) refers to a tribunal in contradistinction to a Court. The expression "a Court" in the technical sense is a tribunal constituted by the State as a part of the ordinary hierarchy of Courts which are invested with the States' inherent judicial powers. The tribunal, as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a Court in the technical sense. The tribunal, according to the dictionary meaning, is a seat of justice; and in the discharge of its functions, it shares some of the characteristics of the Court. A domestic tribunal appointed in departmental proceedings, for instance, or instituted by an industrial employer, cannot claim to be a tribunal under Art. 136(1). Purely administrative tribunals are also outside the scope of the said article. The tribunals which are contemplated by Art. 136(1) are clothed with some of the powers of the Courts. They can compel witnesses to appear, they can administer oaths, they are required to follow certain rules of procedure, the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations. The procedural rules which regulate the proceedings before the tribunals and the powers conferred on them in dealing with matters brought before them are sometimes described as the "trappings of a Court" and in determining the question as to whether a particular body or authority is a tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a Court.

This question [whether an industrial tribunal comes under Art. 136(1)] was considered by this Court in the *Bharat Bank Ltd., Delhi* v. *Employees of the Bharat Bank, Ltd.* (1950 1 L.L.J. 921). The majority decision of this Court was that the functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions and so, though the tribunal is not a Court, it is nevertheless a tribunal for the purposes of Art. 136. In other words the majority decision, which in a sense was epoch making, held that the appellate jurisdiction of this Court under Art. 136 can be invoked in proper cases against awards and other

orders made by industrial tribunals under the Act. In discussing the question as to the character of the industrial tribunal functioning under the Act, Mahajan, J., observed that the condition precedent for bringing a tribunal within the ambit of Art. 136, is that it should be constituted by the State and he added that a tribunal would be outside the ambit of Art. 136, if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. In the opinion of the learned Judge tribunals which are found invested with certain functions of the Court of justice and have some of its trappings also would fall within the ambit of Art. 136 and would be subject to the appellate control of this court whenever it is found necessary to exercise that control in the interest of justice.

It is now necessary to examine the scheme of the relevant provisions of the Act bearing on the voluntary reference to the arbitrator, the powers of the said arbitrator and the procedure which he is required to follow.

Section 10-A under which voluntary reference has been made in both the cases was added to the Act by Act 36 of 1956. It reads as follows:

[The Court quoted Section 10-A as it then stood*.]

Consequent upon the addition of the section several changes were made in the other provisions of the Act. Section 2(b) which defines an award was amended by the addition of the words "it includes an arbitration award made under S. 10A". The inclusion of the arbitration award within the meaning of S. 2(b) has led to the application of Ss. 17, 17-A, 18(2), 19(3), 21, 29, 30, 33-C and 36-A to the arbitration award. Under S. 17(2) an arbitration award when published under S. 17(1) shall be final and shall not be called in question by any Court in any manner whatsoever. Section 17A provides that the arbitration agreement shall become enforceable on the expiry of thirty days from the date of its publication under S. 17, and under section 18(2) it is binding on the parties to the agreement who referred the dispute to arbitration, under S. 19(3) it shall, subject to the provisions of S. 10 [*sic*] remain in operation for a period of one year provided that the appropriate Government may reduce the said period and fix such other period as it thinks fit; provided further that the said period may also be extended as prescribed under the said proviso. The other sub-sections of section 19 would also apply to the arbitration award. Section 21 which requires certain matters to be kept confidential is

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* It was amended by Act No. 36 of 1964, Section 6, by adding Sections 10-A(1-A), (3-A), and (4-A). *Eds.*

applicable, and so S. 30 which provides for a penalty for the contravention of S. 21 also applies. Section 29 which provides for penalty for breach of an award can be invoked in respect of an arbitration award. Section 33C. which provides for a speedy remedy for the recovery of money from an employer is applicable; and S. 36A can also be invoked for the interpretation of any provision of the arbitration award. In other words, since an arbitration award has been included in the definition of the word "award" these consequential changes have made the respective provisions of the Act applicable to an arbitration award.

On the other hand, there are certain other provisions which do not apply to an arbitration award. Sections 23 and 24 which prohibit strikes and lockouts, are inapplicable to the proceedings before the arbitrator to whom a reference is made under S. 10-A, and that shows that the Act has treated the arbitration award and the prior proceedings in relation to it as standing on a different basis from an award and the prior proceedings before the industrial tribunal or labour courts.* Section 20 which deals with the commencement and conclusion of proceedings provides *inter alia* by sub-section (2) that proceedings before an arbitrator under S. 10-A shall be deemed to have commenced on the date of the reference of the dispute for arbitration and to have concluded on the date on which the award becomes enforceable under S. 17-A. It will be noticed that just as in the case of proceedings before the Industrial Tribunal commencement of proceedings is marked by the reference under S. 10, so the commencement of the proceedings before the arbitrator is started by the reference made by the parties themselves, and that means the commencement of the proceedings takes place even before the appropriate Government has entered on the scene and has taken any action in pursuance of the provisions of Sec. 10-A.

Rules have been framed by the Central Government and some of the State Governments under S. 38(2)(aa)** and these rules make provisions for the form of arbitration agreement, the place and time of hearing, the power of the arbitrator to take evidence, the manner in which the summons should be served, the powers of the arbitrators to proceed *ex parte*, if necessary, and the power to correct mistakes in the award and such other matters. Some of these rules (as for instance, Central rules 7,

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* Since this decision sections 22(2)(bb), 23(C), and 24(1)(ii) have apparently been amended so as to include awards on a similar footing. See Act No. 36 of 1964, Section 11. *Eds.*

** Amended by Act No. 36 of 1964, Section 20. *Eds.*

8, 13, 15, 16 and 18 to 28 seem to make distinction between an arbitrator and the other authorities under the Act, whereas rules framed by some of the States (for instance, the rules framed by the Madras State 31, 37, 38, 39, 40, 41, & 42) seem to treat the arbitrator on the same basis as the other appropriate authorities under the Act. That, shortly stated, is the position of the relevant provisions of the statute and the rules framed thereunder. It is in the light of these provisions that we must now consider the character of the arbitrator who enters upon arbitration proceedings as a result of the reference made to him under sec. 10-A.

The argument is that against an award pronounced by an arbitrator appointed under section 10-A a writ of certiorari would lie under Art. 226; so the arbitrator should be deemed to be a tribunal even for the purposes of art. 136. In our opinion this argument is not well founded. Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Art. 136 because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Art. 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed under S. 10-A is not a tribunal under Art. 136 in a proper case, a writ may lie against his award under Art. 226; that is why the argument that a writ may lie against an award made by such an arbitrator does not materially assist the appellant's case that the arbitrator in question is a tribunal under Art. 136.

It may be conceded that having regard to several provisions contained in the Act and the rules framed thereunder, an arbitrator appointed under S. 10-A cannot be treated as exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator under S. 10-A is clothed with certain powers. His procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to those provisions, it may perhaps be possible to describe such an arbitrator as in a loose sense, a statutory arbitrator. But the fact that the arbitrator under S. 10-A is not exactly in the same position as a private arbitrator, does not mean that he is a tribunal under Art. 136. Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. As we will presently

point out, he is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source. The fact that his appointment once made by the parties is recognised by S. 10-A and after his appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a court, does not mean that the power of adjudication which he is exercising is derived from the State, and so the main test which this court has evolved in determining the question about the character of an adjudication body is not satisfied. His position, thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal.

That takes us to the construction of S. 10-A. Section 10-A enables the employer and the workmen to refer their dispute to arbitration by a written agreement before such a dispute has been referred to the labour court or tribunal or national tribunal under S. 10. Mr. Sule [for the appellants] contends—and it is no doubt an ingenious argument—that the last clause of S. 10-A [(1)] means that after the written agreement is entered into by the parties, the reference shall be made to the person named by the agreement but it shall be made by the appropriate Government.

We do not think that the section is capable of this construction. The last clause [(of Section 10-A(1)] which says that the reference shall be to such person or persons, grammatically must mean that after the written agreement is entered into specifying the person or persons, the reference shall be to such person or persons. We do not think that on the words as they stand it is possible to introduce the government at any stage of the operation of S. 10-A(1). The said provision deals with what the parties can do and provides that if the parties agree and reduce their agreement to writing, a reference shall be to the person or persons named by such writing. The fact that the parties can agree to refer their dispute to the labour court, tribunal or national tribunal makes no difference to the construction of the provision. It is clear that when S. 10-A(4) provides that the arbitrator shall investigate the dispute, it merely asks the arbitrator to exercise the powers which have been conferred on him by agreement of the parties under S. 10-A(1). There is no doubt that the appropriate Government plays some part in these arbitration proceedings, it publishes the agreement; it requires the arbitration award to be submitted to it; then it publishes the award, and in that sense some of the features which characterize the proceedings before the industrial tribunal before an award is pronounced and which characterize the subsequent steps

to be taken in respect of such an award, are common to the proceedings before the arbitrator and the award that he may make. But the similarity of these features cannot disguise the fact that the initial and the inherent power to adjudicate upon the dispute is derived by the arbitrator from the parties' agreement, whereas it is derived by the industrial tribunal from the statutory provisions themselves. In this connection, the provisions of S. 10(2) may be taken into consideration. This clause dealt with a case where the parties to an industrial dispute apply in the prescribed manner for a reference of their dispute to an appropriate authority, and it provides that the appropriate government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. Unlike cases falling under section 10(1) where in the absence of an agreement between the parties it is in the discretion of the appropriate Government to refer or not to refer any industrial dispute for adjudication, under S. 10(2) if there is an agreement between the parties, the appropriate Government has to refer the dispute for adjudication. But the significant fact is that the reference has to be made by the appropriate Government and not by the parties, whereas under S. 10-A the appropriate Government [and not the parties, makes the reference.]

Section 18(2)* is also helpful in this matter. It provides that an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration. It will be noticed that this provision mentions the parties who have referred the dispute to arbitration and that the act of reference is not the act of the appropriate Government, but the act of the parties themselves.

Section 10-A(5) may also be considered in this connection. If the reference to arbitration under S. 10-A(1) had been made by the appropriate government then the legislature could have easily used appropriate language, assimilating the arbitrator to the position of an industrial tribunal; and in that case it would not have been necessary to provide that the Arbitration Act will not apply to arbitrations under this section. The provisions of S. 10-A(5) suggest that the proceedings contemplated by S. 10-A are arbitration proceedings to which, but for Sub-sec. (5), the Arbitration Act would have applied.

On behalf of the appellants, reliance has been placed on a recent decision of the Bombay High Court in the case of *Air Corporations Employees' Union* v. *D. V. Vyas* (1962-1 L.L.J. 31). In that case, the Bombay High Court held that an arbitrator functioning under S. 10-A is

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* Amended by Act No. 36 of 1964, Section 9. *Eds.*

subject to the judicial superintendence of the High Court under Art. 227 of the Constitution and, therefore, the High Court can entertain an application for a writ of certiorari in respect of the orders passed by the arbitrator. It was no doubt urged before the High Court that the arbitrator in question was not amenable to the jurisdiction of the High Court under Art. 227 because he was a private and not a statutory arbitrator; but the Court rejected the said contention and held that the proceedings before the arbitrator appointed under S. 10-A had all the essential attributes of a statutory arbitration under S. 10 of the Act. From the judgment, it does not appear that the question about the construction of S. 10-A was argued before the High Court or its attention was drawn to the obvious differences between the provisions of Ss. 10-A and 10. Besides, the attention of the High Court was apparently not drawn to the tests laid down by this Court in dealing with the question as to when an adjudicating body or authority can be deemed to be a tribunal under Art. 136. Like Art. 136, Art. 227 also refers to Courts and tribunals and what we have said about the character of the arbitrator appointed under S. 10-A by reference to the requirements of Art. 136 may prima facie apply to the requirements of Art. 227. That, however, is a matter with which we are not directly concerned in the present appeals.

Mr. Sule [for the appellants] made a strong plea before us that if the arbitrator appointed under S. 10-A was not treated as a tribunal, it would lead to unreasonable consequences. He emphasized that the policy of the legislature in enacting S. 10-A was to encourage industrial employers and employees to avoid bitterness by referring their disputes voluntarily to the arbitrators of their own choice but this laudable object would be defeated if it is realized by the parties that once reference is made under S. 10-A, the proceedings before the arbitrator are not subject to the scrutiny of this Court under Art. 136. It is extremely anomalous, says Mr. Sule, that parties aggrieved by an award made by such an arbitrator should be denied the protection of the relevant provisions of the Arbitration Act as well as the protection of the appellate jurisdiction of this Court under Art. 136. There is some force in this contention. It appears that in enacting S. 10-A the legislature probably did not realize that the position of an arbitrator contemplated therein would become anomalous in view of the fact that he was not assimilated to the status of an industrial tribunal and was taken out of the provisions of the Indian Arbitration Act. That, however, is a matter for the legislature to consider.

In the result, the preliminary objection raised by the respondents in the appeals before us must be upheld and the appeals dismissed on the ground that they are incompetent under Art. 136.

Problem

Before an arbitrator *A*, to whom an industrial dispute has been referred under an agreement between an employer *E* and a trade union *U* in accordance with the provisions of section 10-A of the Industrial Disputes Act, it is contended by *U* that he (the arbitrator *A*) is bound by the norms of industrial adjudication established by industrial tribunals, high courts and the Supreme Court. *A* agrees with the norms but feels that the technical application of the norm would not be just in the circumstances of the case. In order to ascertain the legal position he consults you. Advise him on whether he is bound by the established norms in the same way as tribunals or not. Can he give his decision without mentioning any principle or norm and without assigning any reason or basis to support it? Should he do so?

NOTES

1. In United Salt Works and Industries, Ltd. v. Their Workmen (1961) 2 L.L.J. 93 (S.C.) the same judge, Gajendragadkar, J., had earlier decided an appeal under Art. 136 from the award of a voluntary arbitrator. He did not mention that case in his judgment in this one.

2. The Kerala High Court, in A.T.K.M. Employees' Union v. Musaliar Industries (Private) Ltd., (1962) 2 L.L.J. 317, held the High Court incompetent to exercise its writ jurisdiction under Arts. 226 and 227 against the award of a voluntary arbitrator. But the same High Court subsequently reversed its position in Koru- v. Standard Tile and Clayworks (Private) Ltd. (1964) I L.L.J. 102, and held that a writ may lie under Art. 226 against such award. In doing so the High Court considered itself bound by the relevant observations of the Supreme Court in the Engineering Mazdoor Sabha's case.

Questions:

Is a lower court bound by the obiter dicta of the Supreme Court?

If the Act had been amended when the *Engineering Mazdoor Sabha* case was decided, as it was amended in 1964, would the decision have been different?

VISHNU SUGAR MILLS LTD. v SRI AZIZ
Labour Appellate Tribunal, (1962) II L.L.J. 481.

[A dispute arose between the Company and their workmen. During conciliation before a Board, the parties agreed to appoint the Labour

Commissioner as arbitrator to decide the cases of dismissal of Srivastava, Lal, and Aziz. The Union later agreed to withdraw the cases of Srivastava and Aziz. The Labour Commissioner, however, ignored this agreement and directed reinstatement of both Aziz and Srivastava. The Government then referred the matter to the Industrial Tribunal for adjudication. The Tribunal held the reinstatement of the two workers to be valid.

On appeal, the Labour Appellate Tribunal observed:]

Under paragraph 34 of the settlement arrived at the conciliation proceedings, the Labour Commissioner, Mr. Pandey, was made an arbitrator to decide the dispute relating to the dismissal of Sri. S. P. Srivastava and Syed Abdul Aziz. He made his decision and that decision was that both those persons were to be reinstated. This decision of his, as had been rightly observed by the tribunal, cannot be looked upon in a detached manner. This was a part of the settlement arrived at, at the conciliation proceedings and, therefore, by the reason of the statutory provision contained in section 18 of the Industrial Disputes Act, was binding on the parties to the industrial dispute which was the subject-matter of the conciliation proceedings. The decision of Mr. Pande, the Labour Commissioner, could only be challenged, as was sought to be done before the tribunal, on the ground that he had no authority to arbitrate or at most on any ground which could vitiate the award of an arbitrator acting on a submission of the parties. The authority of Mr. Pande was challenged, the contention being that paragraph 34 of the settlement arrived at at the conciliation proceedings had been superseded by the agreement of 13 January, 1950. We have dealt with that aspect of the case. No other allegations were made by the company which would vitiate the award of the arbitrator acting on a submission. The limited question before the tribunal was whether the decision of Mr. Pande, the Labour Commissioner, was binding and paragraph 34 of the said settlement remaining unaffected made it binding on the parties by the express terms of the settlement, as well as under the plain provisions of the law. We may go further and say that an agreement arrived at in the course of conciliation proceedings stands on a higher footing than any other agreement and the plain provision of law is that it cannot be modified by a tribunal or an adjudicator or any other authority after the settlement becomes enforceable under the law, as in this case, by publication in the official gazette.

[The Labour Appellate Tribunal dismissed the appeal.]

ANGLO-AMERICAN DIRECT TEA TRADING COMPANY LTD. v ITS WORKMEN

Madras High Court, (1963) II L.L.J. 752

[The Company owns and operates a plantation in Coimbatore. It runs a hospital for its workers. The hospital is controlled by the estate manager, but supervised by a chief medical officer, under whom several doctors work. The Management charged one such doctor, a Dr. Mathai, with disobeying orders; with wrongfully recommending sick allowances for workers; and with granting a false medical certificate to the wife of a staff member, and with other offences. The chief medical officer conducted an enquiry, and found the doctor guilty. Thereupon the Company fired him. The employees' Union raised an industrial dispute. The parties agreed to refer that dispute to the arbitration of one Dr. Sivanandam. He held Dr. Mathai's dismissal invalid, and directed his reinstatement. The Management filed a petition for a writ of certiorari, under Art. 226 in the Madras High Court, to quash that award. The judgment of the court, given by Srinivasan, J., follows:]

The short contention advanced by Mr. Nambiar on behalf of respondent 2 [the doctor] is that in so far as an arbitration of this kind is concerned, it is not open to the parties to attack the findings of the arbitrator in any manner, particularly in view of the specific undertaking that the decision of the arbitrator shall be binding on the parties. My attention has also been drawn by Mr. Nambiar to a decision of the Kerala High Court [single bench] in *A.T.K.M. Employees' Association* v. *Musaliar Industries* [1961-1 L.L.J. 81]* wherein it has been held that an arbitrator so appointed under S. 10-A is not a statutory arbitrator, that his authority does not depend on any statutory jurisdiction but that he is a private tribunal set up by agreement. The decision in that case is that no certiorari or prohibition can be issued to him.

The decision would appear to dispose of the present contentions. Nevertheless, I may examine the other arguments advanced on either side.

Mr. G. B. Pai, learned counsel for the petitioner-management, contends that there had been a proper enquiry by the management and that the management on the material before it had the right to take the view

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* A division bench, on appeal, confirmed that decision; vide (1962) II L.L.J. 317. *Eds.*

that it took with regard to the acts of negligence, and that, accordingly, its order discharging him from its service stands fully justified. It is argued that the arbitrator cannot function as a Court of appeal and that his powers are no higher than those of a statutory tribunal. Reliance has been placed in this regard upon a decision of the Supreme Court in *Seth Thavadas Perumal* v. *Union of India* [1955) 11 S.C.R. 48]. It is true that this decision laid down that the legality of an award can be challenged on questions of law, provided the illegality is apparent on the face of the record. But it has to be pointed out that the decision related to an arbitration under the Arbitration Act of 1940 and the scope of interference of a Court with the award of an arbitrator was examined. This decision seems to me to be singularly inapplicable to the present case, where, even according to the statute, [an arbitration] covered by S. 10-A of that Act is made not subject to the Arbitration Act, 1940. It is, therefore, impossible to apply the principles that are relevant to proceedings under the Arbitration Act in questioning the arbitrator's findings in the present case. Mr. Pai frankly concedes that had the arbitrator given his award in a single sentence either that the discharge was justified or was not justified, he could not attack such a decision of the arbitrator; but according to him, since the arbitrator has examined the evidence and reached a conclusion on the merits of the case, he is entitled to point out that the findings are perverse. Even assuming that such an argument is open to him, an arbitrator appointed under S. 10-A of the Act does not appear to suffer from the limitations which an industrial tribunal is placed under. No authority has been shown to me to suggest that a private arbitrator cannot examine the actions of the management and even canvass the correctness of its findings on questions of fact. All the cases that have been referred to by the learned counsel for the petitioner are cases where a statutory industrial tribunal was seized of the matter, cases which to my mind hardly have any application here.

It has however been contended by Mr. Pai, learned counsel for the petitioner, that the arbitrator has exceeded his jurisdiction. It is somewhat difficult to appreciate this point, for, as I can gather from the arguments on both sides, the arbitrator was clearly invited to go into the matter in full detail. In fact, though the management contended that it had conducted an enquiry into the charges framed against Dr. Mathai, it did not, before the arbitrator, purport to depend upon the record of that enquiry or the findings reached therein. It appears to have been pointed out that some of the important witnesses, upon whose testimony alone any findings could be reached, had not been examined during the course of the domestic enquiry. It was [the] chief medical officer who conducted the domes-

tic enquiry and it would not be far-fetched to state, as the arbitrator stated in his award, that even before the commencement of the enquiry, the enquiring officer appeared to have been prejudiced against Dr. Mathai and purported to rely upon personal knowledge and discussions, which he had with the management, and expressed himself as satisfied that they had lost confidence in Dr. Mathai as a medical officer. The arbitrator accordingly thought that the domestic enquiry was not a fair one. He thought therefore that the enquiring officer was biased and showed an inclination to fall in with the wishes of the management and that an enquiry conducted by a person so inclined would certainly not be fair to Dr. Mathai. The arbitrator reached the conclusion that the enquiry was not properly conducted, and even used a much stronger expression to the effect that the domestic enquiry appeared to be "farcical". It appears to have been in these circumstances, that the management had all the witnesses examined before the arbitrator, and in fact, the arbitrator had, in a manner of speaking, to conduct the enquiry afresh, for, certain additional charges figured in the counter-statement filed by the management before the arbitrator. Mr. Pai's contention that the arbitrator should not have embarked upon an investigation of this kind loses much of its force in the light of these features. As I have indicated, an arbitrator under S. 10-A of the Act does not stand on a par with an industrial tribunal or a labour court. No decision which would more particularly define the scope of the functions of an arbitrator under S. 10-A vis-a-vis a labour court or an industrial tribunal dealing with a matter on a reference under S. 10 of the Act has been brought to my notice. But, in a decision of the Supreme Court in *Ritz Theatre* v. *Its Workers* [1962-II L.L.J. 498], some principles relating to the recognised limitations on the jurisdiction of an industrial tribunal to interfere with the result of a domestic enquiry have been indicated. It is pointed out therein that it would be open to the employer to act on the report of an enquiry officer if the employer serves the relevant charge or charges on the employee and holds a proper and fair enquiry. If the enquiry has been properly held, the order of dismissal can only be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the dismissal vindictive. The jurisdiction of an arbitrator under S. 10-A is certainly different from that of an industrial tribunal under S. 10. In addition to that, we have the further fact that the management did in fact treat the matter as though the enquiry was being conducted for the first time before the arbitrator, the more so for the reason that the witnesses relevant to more than one of the charges had not been examined at the domestic enquiry. Having regard to all of these circumstances, it is abundantly clear that both the parties understood the proceedings before the arbitrator to be

one more in the light of a new enquiry on the basis of the charges which were indicated in the counter-statement filed by the management. There is thus no substance in the complaint of Mr. Pai, learned counsel for the management, that the arbitrator has exceeded his jurisdiction.

Nor do I find it possible to agree with the argument that the arbitrator has purported to regard himself as an appellate forum. When, as I have pointed out, the matter was thrashed out in its entirety before the arbitrator, it was not a case where the findings of the domestic enquiry or the evidence upon which those findings were based was subjected to scrutiny by the arbitrator. On the other hand, he entered into the merits of the case independent of the previous records, though he might have made certain observations about the nature of the domestic enquiry and commented upon the course it took, which, according to him, failed to observe the principles of natural justice. That does not mean he regarded himself as entertaining an appeal against the decision of the management. This contention must therefore fail.

It has next been argued that the findings of the arbitrator are perverse. I have not been invited to go into the substance of the evidence with regard to each charge or to adjudicate upon the reasonableness of the conclusion reached by the arbitrator. Certainly that would not be within the proper jurisdiction of this Court.

I have been taken through the entire evidence and the reasoning of the arbitrator, more as if, as Mr. Nambiar pointed out, this Court were sitting as an appellate Court over the decision of the arbitrator. It is unnecessary to point out that this Court cannot enter into an examination of the facts, in that light. Even assuming that a private arbitrator under S. 10-A of the Act is one against whose decision certiorari can issue, unless it is made apparent that the arbitrator reached a finding unsupported by any material evidence or that the finding is so perverse that it cannot be supported, this Court cannot possibly interfere.

It is not enough for the petitioner to urge that upon certain admitted and proved facts this Court could come to a different conclusion as to the reasonableness of the order of discharge made by the management. What the arbitrator was apparently entrusted with was to discover whether the responsibility which respondent 2 had as the doctor in charge of the plantation labour came into conflict with the managerial control and that if respondent 2 did display impatience and a species of impertinence, was that sufficient to justify the order of discharge, more particularly when it appeared to the arbitrator that as between the

management, on the one hand, and respondent 2, on the other, there had been some friction which arose by reason of the management taking sides with some members of the staff. Though it is not stated in so many words, the arbitrator appears to have been inclined to take the view that respondent 2 had been unfairly treated, a view which it is not possible for this Court to discount altogether. It is difficult to see how in these circumstances it can be held that the arbitrator deliberately misread the evidence, or that his conclusion regarding the validity of the order of discharge was not properly and fairly arrived at; and more particularly, having regard to the fact that this being in the nature of private arbitration, the arbitrator was not bound by the limitations of statutory arbitration, I am unable to agree with the learned counsel for the petitioner that the arbitrator's award is liable to be interfered with.

The petition accordingly fails and is dismissed....

AIR CORPORATION EMPLOYEES' UNION v VYAS
Bombay High Court, (1962) I L.L.J. 31

[The Union served the Company with two voluminous charters of demands; the second containing 57 items. During negotiations on these, the Company agreed to some of the demands, and the Union withdrew some others. Those remaining the parties agreed in writing, under Section 10-A, to refer to an arbitration committee consisting of two representatives of the Management and two representatives of the Union; and one independent Chairman with the status of a high court judge, to the nominated by the Government. Their agreement recited that,

"We further agree that the unanimous decision of the arbitrators shall be binding on us. In the event of there being no unanimity amongst the arbitrators, the decision to be made by the independent chairman nominated by Government will be deemed to be an award made by a single and sole arbitrator,"

The agreement was duly published and the independent Chairman was duly appointed.

Hearings were held; they ended on 29th April 1960. Later, on 9th May 1960 the four arbitrators reached unanimous decisions on all the demands except one, and agreed that that one should be decided by the Chairman. This was probably after the Chairman had begun to prepare his award. The Chairman disagreed with the four's decisions, and considered himself entitled to give his own decisions on all the demands. He therefore called and held further hearings (but these the Union's arbitrators

did not attend). On 14th May 1960 he and his wife visited the United States of America as the Company's guests; he returned in August and went on with the work on his award. The Union filed a writ petition to restrain an award, but withdrew it later after a conference of all parties with the Minister of Law, Judiciary, and Labour on 7 September 1960. The award followed, disposing of several of the agreed points, and rejecting the one demand not settled by the four arbitrators.

The Union filed a writ petition in the Bombay High Court challenging the legality of the award. The Union claimed (i) that the Chairman could not give directions in regard to the implementation of the decisions of the four arbitrators; (ii) that he had no right to reverse any of those decisions; and (iii) that by accepting free air tickets and other hospitality of the Company, he had incapacitated himself from serving as an arbitrator. The Company raised a preliminary objection that no writ could be issued to a private arbitrator. Parts of the judgment of the court, given by Patel, J., follow. (The separate judgment of Chandrachud, J., on the jurisdiction of the High Court to entertain a writ under Art. 226 or an application under Art. 227 is omitted)].

Consistent with the principle of agreed settlement of disputes by S. 10-A: an innovation was made by which parties were enabled to nominate their own arbitrator instead of the tribunals under the Act. An agreement has to be entered into in the form prescribed. Under Sub-sec. (3) of S. 10-A, it is to be forwarded to the appropriate Government. The Government is required to publish the same in the gazette and thereafter the arbitrator has to enter into the reference. Sub-sec-(4) makes it obligatory on the arbitrator to investigate the dispute and submit his award to the appropriate Government. Sub-sec. (5) excludes the application of Arbitration Act, 1940. Under S. 11, the arbitrator is required to follow the procedure prescribed by the rules framed under the Act. [Section 2(6)'s definition of "award" includes an award by an arbitrator under S. 10-A.] Section 17 [concerning publication] places his award and that of a tribunal constituted under the Act in the same position and it is as binding and final as that of the tribunal. Non-compliance with the award carries the same penal consequences as in the case of an award by the tribunal. These provisions make it amply clear that though the arbitrator is initially appointed by the parties, his position is no different from that of a tribunal constituted under the Act.

It is well-established now that a tribunal constituted under the Act is subject to the jurisdiction of the High Court, under Arts. 226 and 227 of the Constitution inasmuch as it is held to fall within the word

"tribunals" in Art. 136. The language of Arts. 226 and 227 is very wide and is unqualified. The award has far reaching consequences and there is no method by which such an award can be challenged. In view of the peculiar position of the arbitrator under S. 10-A even if he is not exactly a tribunal under the Act he is so very like it, that he must be held to be a "tribunal" under Art. 227 of the Constitution, and as such he is subject to the jurisdiction of the High Court under Arts. 226 and 227....

Though the words of Art. 227 are very wide, the jurisdiction is merely supervisory. The exercise of jurisdiction is subject to well-known and now well-established limitations, a writ being generally granted if a tribunal acts without or in excess of jurisdiction. Absence of jurisdiction may arise out of several causes and [jurisdiction] similarly may be lost for several reasons. A tribunal may suffer from incapacity or disability by reason of some extraneous circumstances, and if a clear case is made out where it has acted without jurisdiction or in excess of jurisdiction, and justice demands, the Court is entitled to interfere.

So far as the first ground of attack is concerned, it is not possible to accept the contention raised on behalf of the petitioners. It is no doubt true that in Para. 793 of his award, respondent 1 (The Chairman) says:

"I would not withhold the results of this agreement from the employees. I accordingly direct the above agreement reached by the four arbitrators on 9 May 1960, in respect of all the demands which were before the arbitration committee and subsequently ratified by the parties be implemented." But, then, this is not all. He proceeds in the same paragraph immediately thereafter to say that:

"This agreement, however, as it stands is vague on several material points and is likely to lead to industrial disputes unless clear instructions are given as to its implementation.... In these circumstances, in order that this award may not be a genesis of further industrial disputes and unrest, I consider it necessary to give the following directions subject to which the agreement, dated 9 May 1960, shall be implemented." One must read the paragraph as a whole. Everything cannot be said either in one word or in one sentence. On a fair construction of the paragraph, it seems that respondent 1 agreed to the implementation of the decision of the four arbitrators, subject to his directions.

On the second question, i.e., jurisdiction, the contentions of the petitioners must be accepted. I agree with my learned brother that the agreement can have only one interpretation and that is, if the four arbitrators appointed by the parties unanimously agreed, the chairman lost jurisdiction to act as a sole arbitrator. Giving a fair and reasonable meaning to the terms of reference, it is clear that the parties could not have intended to make him the sole arbitrator at his choice by disagreeing with the four arbitrators. There is no substance in the contention made on behalf of respondent 6 (the Company) that the four arbitrators were not authorized by the corporation to act as they did. Their authority was derived from the reference itself and was not required to be under any other arrangement. The affidavit filed by respondent 2 nominated on the committee of arbitration by the corporation, particularly Para. 9 shows that the agreement was arrived at as members of the arbitration committee and not as representatives on behalf of the party. It is also further clear from Para. 3 of the said affidavit that even the chairman of the corporation was not averse to the four arbitrators, i.e., respondents 2, 3, 4, and 5, as such attempting to reach agreed solutions in respect of the demands which were referred to the committee. The same inference arises from the affidavit of Sri Banavalikar on behalf of the corporation. It must, therefore, be held that respondent 1 (The Chairman) lost jurisdiction to decide the matter as the sole and independent arbitrator.

It is also clear that the third ground of challenge must also succeed. The averments in respect of this contention are made in paras. 6 and 9 of the petition. Sri Banavalikar on behalf of the corporation states in his affidavit that after negotiations it was agreed that the remuneration of respondent 1 (the Chairman) would be Rs. 60,000 plus two return air passages to the U.S.A. He was invited to the inaugural flight when the 'Boeing' service was started in the month of May. Along with the respondent and his wife, there were other guests and Sri Banavalikar has stated that the respondent 1 was not given any hospitality other than that which was given to the other guests, the implication being that at least for the seven days that the guests were in the U.S.A. respondent 1 and his wife enjoyed the hospitality of the corporation. There can be no doubt that the hospitality could not have been niggardly. The acceptance of such hospitality during the pendency of arbitration would clearly amount to legal misconduct. It may be that a single lunch or some entertainment at tea during the pendency of an arbitration proceeding accepted by an arbitrator may not amount to such misconduct as to vitiate an award if no prejudice is shown. Even in such

cases Courts have not looked upon such indiscretion of even lay arbitrators with any amount of favour and such conduct has been severely criticised. As there is no prayer that the decision on demand 20 be also quashed, it is not necessary to quash it.

Questions:

1. What, in detail, was the court's disposition of this case?

2. On what points in such disposition do you agree? On what such points do you disagree? Why?

NOTE: A prominent labour arbitrator in New York City, Mr. Peter Seitz, has also a gift of light verse. At our request, he allows us to publish the following fragment. It is based on the tradition that (unless both sides join in an invitation) a labour arbitrator must not accept any hospitality, even a luncheon, from one side alone.

Table for one

The Arbitrator calls a lunch recess;
And bliss and joy suffuse each tired face.

Forthwith, into the Coffee Shop they press;
In threes and fours, relaxing from the case.

with tragic mien and forlorn anguished groan;
The Arbitrator takes his lunch alone!

4. *Adjudication*

There is a well-known admonition that war is too important to be left to the generals. In similar vein, industrial disputes are thought by many to be too important to be left to the parties. This is the prevalent view of the centres of power in India today.

In the United Kingdom and the United States, (but not in Australia, and much less on the Continent of Europe) a different theory and system prevail. This is known as collective bargaining. Under it the workmen through their representatives bargain with the employers for agreements determining the terms and conditions of employment. Inasmuch as industrialization came to a large extent from the western countries, it is natural that ever since Independence the Indian policy-makers have paid lip service at least to the virtues of collective bargaining. It was a traditional feature of labour relations in western countries, and such relations came to India with industrialisation.

But in practice the Indian government has retained ultimate control over terms and conditions of employment, through compulsory adjudication as the last resort. The basic reason for this is doubtless a fear of strikes, as detrimental to production. Other reasons are: (1) a lack of confidence in the responsibility of trade unions; (2) a fear of the Communists' gaining in strength through collective bargaining; and (3) an apprehension that collective bargaining might bring inflation.

The necessity for maintaining industrial peace during the emergency of the Second World War brought to India the first experience in compulsory adjudication. Rule 81A of the Defence of India Rules contained these provisions. The Industrial Disputes Act, 1947, passed long after the repeal of that Rule, embodied much of its content as normal legislation. The first step, under the Act, is conciliation. If the Conciliation Officer (or Board of Conciliation) fails to bring about a settlement and if the parties do not agree to arbitration, then the appropriate Government (the Central in some industries; a state government in others) may refer the entire dispute, or particular issues, to adjudication.

The Act envisages three kinds of court: labour courts, industrial tribunals, and national industrial tribunals.

A labour court can be constituted by an appropriate Government and it can decide certain specified disputes of a minor and common nature. It can also decide disputes in regard to certain specified matters of greater importance when the number of workmen affected is not more than one hundred and when the appropriate government thinks fit.[1]

An industrial tribunal can be constituted by an appropriate government and it can now decide any industrial dispute referred to it.[2]

A national industrial tribunal can be constituted by the Central Government, whether it happens to be the appropriate government or not, and can decide disputes of national importance and those which involve industrial establishments situated in more than one state.[3]

When a case is referred to a national industrial tribunal, any proceedings pending before the other two kinds of court involving any issue so referred to the national tribunal are automatically transferred to the

1. Sections 7 and 10(1); 2d and 3d Schedules.
2. Section 7A.
3. Section 7B.

national tribunal. Pending adjudication by the national tribunal, no government can refer any matter relating to the pending proceedings to any other court.[4]

Each of these adjudicating bodies consists of one adjudicator only. Judicial experience prior to appointment is a requirement for appointment to each; though the periods and natures of the judicial offices to be held vary from one to the other. To advise an industrial tribunal or a national industrial tribunal, two assessors can be appointed by the appropriate government, or by the Central Government, respectively.[5]

Each of these adjudicating bodies depends for jurisdiction on a reference. Where the points of dispute are specified in the reference to it, it must confine its attention to these points, and matters incidental thereto.[6] It cannot decide an issue not referred to it.[7] The adjudicating body hears the parties' claims, takes evidence and makes its award. Its procedures and practices are similar to those of a court of law. The procedural technicalities of the Indian Evidence Act do not apply to these bodies. But in matters of proof of documents and claims of privilege, the courts hold that the adjudicating body has to adopt rules similar to those of a court of law.[8]

While a court of law must decide in accordance with applicable law, there is frequently no applicable law for a labour dispute. Suppose, for example, that the workers and their union want a twenty per cent wage increase. The employers refuse to grant more than ten per cent. The tribunal has to decide. Where can it turn for applicable law? Obviously, none exists. The maintenance of industrial peace is its main concern; the adjudicating body strives to achieve this, and must make its law as it goes. A duty is cast on it to dispose of all matters referred to it expeditiously, and to submit its awards.[9]

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4. Section 10(6).

5. Section 7, 7A and 7B.

6. Section 10(4).

7. U.P. Electric Supply Co. Ltd., v. Workers of Messrs. S. M. Choudhary, A.I.R. 1960 S.C. 818; (1960) I L.L.J. 808.

8. Petald Turkey Red Dyeing Works Ltd. v. Dyes and Chemical Workers' Union, (1960) I L.L.J. 548 (S.C.); Reserve Bank of India v. Central Government Industrial Tribunal, Delhi, (1959) I L.L.J. 539 (Punjab); [1959-60] 15 F.J.R. 297 (Punjab).

9. Section 15.

In most citations, an appropriate Government exercises discretion whether or not to refer an existing dispute, or one that is to be apprehended.[10]

On a failure of conciliation proceedings, it can either make a reference or refuse to make one. In the latter case it has to record its reasons for its refusal to refer.[11] It must always refer a dispute, however, whenever persons representing the majority of each party to that dispute apply for such reference in the prescribed manner.[12] It must almost always refer any dispute that concerns a public-utility service. Only when the government considers that in such a dispute a notice under section 22 regarding strikes and lock-outs was given frivolously, may it decline to make a reference.[13] A reference must be made within a reasonable line.[14] A reference made by an appropriate Government can be quashed in writ proceedings if the government was actuated by mala fides in making the reference.[15]

When the appropriate government is satisfied that a dispute is of such nature that any other establishment or establishments are likely to be affected or interested, it can add them as parties to the dispute, and may do so at any time before the award.[16]

The appropriate government cannot modify or cancel a reference, but it can transfer the case to another adjudicating body.[17]

Adjudication seeks to settle disputes better and more justly than strikes could settle them, and without the losses that strikes bring to workmen, employers, and public. Therefore the Act tries to limit strikes; at the same time it also tries to impose some restraints on lock-outs and on changes by employers of working conditions during an adjudication. The

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10. Section 10(1).
11. Section 12(5).
12. Section 10(2).
13. Section 10(1).
14. Shalimar Works Ltd. v. Workmen, A.I.R. 1959 S.C. 1217.
15. British India Corporation Ltd. v. Industrial Tribunal, Punjab, A.I.R. 1957 S.C. 354.
16. Section 10(5).
17. Section 33B.

appropriate Government can prohibit the continuation of a strike or a lock-out, after having made reference of that dispute.[18]

Seven or more workmen can form a union and register it.[19] Any officer of a union, or of a federation of unions, can represent a member workman. If the workman is not a member of any union, he can authorise any other workman in the industry to represent him, or any officer of a union connected with the industry.[20]

Unless some other effective date is specified, an award, after being published within thirty days, becomes enforceable after another thirty days.[21]

But if the appropriate government is a party to the case, it can reject the award "on public grounds affecting national economy or social justice". The Central Government may, on similar grounds, reject the award of a national tribunal, and may do so even though the Central Government is not a party to the case. After an order postponing the award's effectiveness, on these grounds, the award can then be rejected or modified by the proper government within ninety days from the award's publication. This action then has to be placed before the appropriate legislature; and the award becomes enforceable in its original form in fifteen days unless the legislature acts. When the appropriate government does not modify or reject the award it becomes enforceable ninety days after publication.[22]

The effective period of an award can be changed by the appropriate government, within certain specified limits.[23]

Subject to the foregoing, an award is binding on all the parties to the industrial dispute, including all parties properly brought into the proceedings, and their representatives.[24] A violation of any provision of an award can be treated as an offence and can be punished accordingly.[25]

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18. Section 10(3); Workmen v. Express Newspapers Ltd. A.I.R. 1961 Mad. 331.
19. Section 4, Trade Unions Act, 1926.
20. Section 36, Industrial Disputes Act.
21. Section 17, 17A.
22. Section 17A.
23. Section 19.
24. Section 18.
25. Section 29.

The reader should keep an open mind on the adequacy of adjudication to settle industrial disputes. The judgments that follow will imply, quite naturally, that adjudication performs its functions pretty well. Before reading them, consider the following harsh criticism of adjudication of grievance disputes, from R. F. Rustamji, The Law of Industrial Disputes in India (Asia, 2d ed. 1964) at pages 68-72. Perhaps the indictment is too severe? Keep it in mind, however, in coming to your own conclusion on this debatable and explosive issue.

THE GRAVE PROBLEM OF INDISCIPLINE IN INDUSTRY

In all industrial concerns there frequently arise cases of indiscipline and misconduct, and these lead to the question as to how the guilty workman should be dealt with. The employer often wishes to dismiss the workman or otherwise punish him. The workman urges that he was not guilty; if he is punished he says that he has been unjustly dealt with.

The problem is not simple and it is not small. The varieties of misconduct which workmen can and do commit can be numerous. These can range from unmannerliness, rudeness and insubordination, to flagrant defiance, wilful disobedience and physical violence towards his fellow workmen or towards his superior officers; the workman might steal; a clerk might misappropriate money; in times of strikes and lock-outs, the workmen can and sometimes do threaten and even actually injure the plant or the property of the employer. These are only examples. There are hundreds of offences mentioned in the Indian Penal Code which the workmen can commit inside the factory itself.

One important aspect of this problem is that at least in our country, while attempting to maintain discipline, the Management and supervisory staff meet with violent opposition from the workmen. Provocations of a trivial nature appear to have resulted in violent assaults on those seeking to enforce discipline. In one particular year, in Bombay, three high executives of industrial establishments were murdered by workmen; there were thirty-four "non-fatal" cases; these were by aggrieved workmen for non-employment, maintenance of discipline, strikes and lock-outs and "miscellaneous" and "unknown" causes.[1]

Fortunately, in spite of the figures just mentioned, such grave offences are few and far between—though their seriousness cannot be ignored; what poses a serious and chronic problem for the Management is the

1. Industrial relations and personnel problems by K. A. Zachariah, p. 50.

general spirit of indiscipline and defiance which is prevalent, lack of co-operation and the unwillingness on the part of the workman to do his full share of work.

The problem would not be difficult to deal with if it concerned a stray case of misconduct anywhere else than in present-day industry. But here the problem is rendered complicated by the fact that these cases are not inconsiderable in number, and secondly—and this is most important—the workman has his Union—consisting of large numbers of his fellow-workers to make common cause with him and to back him up. A small incident such as a heated argument with one workman might lead to a "lightning strike" in the whole establishment, or even in the whole industry. A deadlock so created might continue for days or even for months. Neither the workman nor the employer nor the Government—nor even the general public—can be indifferent in a matter of this kind and of this magnitude.

This Act, designed as it is "for the investigation and settlement of industrial disputes," provides a machinery for settling disputes of this nature, and there are local Acts which obtain for this purpose in some of the States in India. Industrial Tribunals set up under this and other Acts have laid down certain principles which are supposed to be intended to secure "social justice" to workmen.

It is submitted that it is doubtful if this aim has been achieved. The principles are vague and undefined. These have led to litigation on a large scale, but in the long run, the manner in which these are administered has done no good to the country or to industry or to the workmen.

But what are these "principles"? Under Industrial Law today an employer cannot take any punitive action against a workman or a body of workmen until he first gives a "charge-sheet" setting out as to what is the misconduct of which he or they are accused. He must thereafter hold an "enquiry"—called a "Departmental Enquiry" or "Managerial Enquiry" or a "Domestic Court", or a "Domestic Enquiry" in it he must, at least as far as may be, play the role of a 'Judge'. The workman may file a statement in answer to the "charge-sheet". Both parties and their witnesses must be examined and cross-examined. The workman may argue his case—he may perhaps even get a "friend" to assist him. Thereafter the employer may, if the grounds justify, pass the order holding the workman or workmen guilty, and awarding punishment. The findings, the law requires, must be "fair" and "according to well-established principles of natural justice". The punishment must not be too severe. These are only some of the requirements. Against the final order of the employer, the

workman may seek redress under this Act (or any other Act), before an industrial tribunal or other authority.

At this stage the employer ceases to be a 'Judge' and becomes a party—almost an accused; he must defend his action before the Tribunal; he must produce his papers relating to the Enquiry. He or his lawyer (if he is permitted one) or other representative will be heard by the Tribunal. The workman too is entitled to a hearing. The Tribunal can upset the decision on any of several grounds open to him. If the Tribunal decides against the employer, it can order that the workman must be reinstated in his service, and must be paid all his back-wages and allowances. These may be for several months, or even years, during which time the workman has done no work, being engaged in fighting his employer. If either party is aggrieved, it can go to the High Court or to the Supreme Court, which will finally decide the question whether the dismissal was proper or not.

Difficult as it must seem to be, on going through the above lines, to follow all this procedure, it is in actual practice even more difficult. To draw up a "charge-sheet" is no easy matter for most people who have never even heard these words before. But the charge-sheet having been drawn up with the aid of a lawyer, there are problems which are often beyond even the capacity of the latter. For example, the workman has to be served with the "charge-sheet". His correct address must be got at, for he will in all probability not accept the charge-sheet, or having accepted it, he will refuse to sign it in token of having received it. The workman, if there is one, and the whole lot of workmen, if there are many, must be sent the charge-sheets by post (not ordinary post but "Registered Post with Acknowledgment Due"). In a week or ten days some of the postal acknowledgments may come back with the notices served, others may be returned unserved, or with the remark "Gone to village"! But let us assume that notices are served at last—a month passes in this—and a written statement is received. The charge is usually denied. Now the employer must proceed to hold an Enquiry. This is not an easy task for one who does not know the intricacies of law and procedure. The workman may send false medical certificates; he may be rude or defiant during the enquiry; but the employer would be wise to ignore all this. After examining and cross-examining witnesses for the "Prosecution" and for the "Defence", the employer must pass an "order". It must be suitably worded—almost like the judgment of a Court, and it must stand scrutiny by the Tribunal, before which the workman or an Officer of his Trade

Union will try—literally, of course—to tear the order to pieces. If the employer is present personally, he soon feels his position very untenable. He is referred to in arguments as an "interested party" (which undoubtedly he was, and is); his Foreman (who testified at the enquiry) is called an "unreliable witness", or even a "liar"! Now the Tribunal and the Trade Union leaders will talk of "Collective Bargaining" and "Principles of Natural Justice", and of several Acts with long names, and of S.C. Rs. A.I.Rs., L.A.Cs. L.L.Js., F.J.Rs. and F.L.Rs.—phrases and letters which mean little even to an average lawyer if he is unversed in "Industrial Law", and things which utterly unknown to the average citizen in this country.

By the time the litigation has been up to the stage of the High Court —it may even go to the Supreme Court—several months, even years, may have passed, and huge amounts of money spent on litigation; often the proceedings are found to have been defective for some technical reason; the workman is then "reinstated"—that is, he is forcibly put back into the service of this employer who is unwilling to employ him and who is not desirous of his services. The workman is also paid all his back wages and allowances! It is anybody's guess as to what work this reinstated employee will do and what influence he will have in the industry on which he is foisted on account of these "principles of natural justice"....

In contrast to what Mr. Rustamji sees as the failures of adjudication to settle grievances decently, he points to some American experience *(Id.* at 83):

In the October 1959 issue of *American Labor Review,* there is the Editor's letter which deals with the question of setllement of such disputes in U.S.A. The letter contains some useful information on the matter now under consideration:

> "Ninety-nine per cent disputes between Labor and Management in the United States are settled over the bargaining Table without recourse to labour tribunals, appellate tribunals, State Courts or the U.S. Supreme Court. We have discovered that this primary reliance on collective bargaining speeds the settlement of disputes and thereby helps to maintain industrial harmony and an uninterrupted flow of production....
>
> "Since justice delayed is often justice denied, it has been our nation's experience that speed in the settlement of disputes is one

of the prime essentials of industrial peace. That is why our faith is placed in face-to-face collective bargaining at the plant level. This is the most practical way to settle problems. The second way is voluntary arbitration—a just and quick method of solving differences."[1]

THE BHARAT BANK LTD. DELHI v THEIR EMPLOYEES

Supreme Court, (1950) II L.L.J. 921.

[The question was whether a tribunal's award was appealable under Article 136. Excerpts from the judgments follow:]

Fazal Ali J.: Now there can be no doubt that the industrial tribunal has, to use a well-known expression, "all the trappings of a court" and performs functions which cannot but be regarded as judicial. This is evident from the rules by which the proceedings before the tribunal are regulated. It appears that the proceeding before it commences on an application which in many respects is in the nature of a plant. It has the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of discovery, inspection, granting adjournment, reception of evidence taken on affidavit, enforcing the attendance of witnesses, compelling the production of documents, issuing commissions, etc. It is to be deemed to be a civil court within the meaning of sections 480 and 482 of the Criminal Procedure Code, 1898. It may admit and call for evidence at any stage of the proceeding and has the power to administer oaths. The parties appearing before it have the right of examination, cross-examination and re-examination and of addressing it after all evidence has been called. A party may also be represented by a legal practioner with its permission.

The matter does not rest there. The main function of this tribunal is to adjudicate on industrial disputes which implies that there must be two or more parties before it with conflicting cases, and that it has also to arrive at a conclusion as to how the dispute is to be ended....

It is to be noted that under section 15 of the Industrial Disputes Act, 1947, in cases where the appropriate Government is not a party to the dispute, all that the Government has to do on receiving the award of the tribunal is to declare it to be binding and to state from what date and for what period it will be binding. Section 15 is mandatory and it provides:

1. Quoted in (1959-60) 17 F.J.R. (Journal Section), p. 1.

> "On receipt of such award, the appropriate Government shall by order in writing declare the award to the binding...."

Thus the Government cannot alter, or cancel, or add to the award, but the award must be declared to be binding as it is. In substance, therefore, the adjudication of the tribunal amounts to a final determination of the dispute which binds the parties as well as the Government....

Mahajan, J.: It is now convenient to consider whether a tribunal constituted under the Industrial Disputes Act, 1947, exercises all or any of the functions of a court of justice and whether it discharges them according to law or whether it can act as it likes in its deliberations and is guided by its own notions of right and wrong. The phrase "industrial dispute" has been defined in section 2, clause (k) of the Act as follows:-

> "any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Such a dispute concerns the rights of employers and employees. Its decision affects the terms of a contract of service or the conditions of employment. Not only may the pecuniary liability of an employer be considerably affected by the adjudication of such dispute but it may even result in the imposition of punishments on him. It may adversely affect the employees as well. Adjudication of such a dispute affects valuable rights. The dispute and its result can always the translated in terms of money. The point for decision in the dispute usually is how much money has to pass out of the pocket of the employer to the pocket of the employee in one form or another and as to what extent the right of freedom of contract stands modified to bring about industrial peace. Power to adjudicate on such a dispute is given by section 7 of the statute to an Industrial Tribunal and a duty is cast on it to adjudicate it in accordance with the provisions of the Act. The words underlined clearly imply that the dispute has to be adjudicated according to law and not in any other manner. When the dispute has to be adjudicated in accordance with the provisions of the Act, it follows that the tribunal has to adhere to law, though that law may be different from the law that an ordinary court of justice administers. It is noteworthy that the tribunal is to consist of experienced judicial officers and its award is defined as a determination of the dispute. The expression "adjudication" implies that the tribunal is to act as a judge of the dispute; in other words, it sits as a court of justice and does not occupy the chair of an administrator. It is pertinent to point out that the tribunal is not given any

executive or administrative powers. In section 38 of the Act power is given to make rules for the purpose of giving effect to the provisions of the Act. Such rules can provide in respect of matters which concern the *powers and procedure* of tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject matter and as to appearance of legal practitioners in proceedings under this Act. Rule 3 of these rules provides that any application for the reference of an industrial dispute to a tribunal shall be made in form (A) and shall be accompanied by a statement setting forth, *inter alia,* the names of the parties to the dispute and the specific matters of dispute. It is in a sense in the nature of a plaint in a suit. In rule 13 power is given to administer oaths. Rule 14 provides as follows:

> "A tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit."

Rule 17 provides that at its first sitting the tribunal is to call upon the parties to *state their case.* In rule 19 provision has been made for proceedings *exparte.* Rule 21 provides that in addition to the powers conferred by sub-section 3 of section 11 of the Act, a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely (a) discovery and inspection; (b) granting of adjournment; (c) reception of evidence taken on affidavit; and that the tribunal may summon and examine *suo motu* any person whose evidence appears to it to be material. It further says that the tribunal shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. Rule 21 says that the representatives of the parties, appearing before a tribunal, shall have the right of examination, cross-examination and re-examination and of addressing the *court* or *tribunal when all evidence has been called.* In rule 30 it is provided that a party to a reference may be represented by a legal practitioner with the permission of the tribunal and subject to such conditions as the tribunal may impose. In section 11(3) it is laid down that a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed; and every inquiry or investigation by a tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

It is difficult to conceive in view of these provisions that the Industrial Tribunal performs any functions other than that of a judicial nature. The tribunal has certainly the first three requisites and characteristics of a court as defined above. It has certainly a considerable element of the fourth also inasmuch as the tribunal cannot take any administrative action, the character of which is determined by its own choice. It has to make the adjudication in accordance with the provisions of the Act as laid down in Section 7. It consists of persons who are qualified to be or have been judges. It is its duty to adjudicate on a serious dispute between employers and employees as affecting their right of freedom of contract and it can impose liabilities of a pecuniary nature and disobedience of its award is made punishable. The powers exercisable by a tribunal of the nature were considered in a judgment of the Federal Court of India in *Western India Automobile Association v. Industrial Tribunal, Bombay* (1949) F.C.R. 321; 1949 II L.L.J. 249 and it was observed that such a tribunal can do what no court can, namely, add to or alter the terms or conditions of the contract of service. The tribunal having been entrusted with the duty of adjudicating a dispute of a peculiar character, it is for this reason that it is armed with extraordinary powers. These powers however, are derived from the statute. These are the rules of the game and it has to decide according to these rules. The powers conferred have the sanction of law behind it and are not exercisable by reason of any discretion vested in the members of the tribunal. The adjudication of the dispute has to be in accordance with evidence legally adduced and the parties have a right to be heard and to be represented by a legal practitioner. Right to examine and cross-examine witnesses has been given to the parties and finally they can address the tribunal when evidence is closed. The whole procedure adopted by the Act and the rules is modelled on the Code of Civil Procedure. In my opinion, therefore, the Industrial Tribunal has all the necessary attributes of a court of justice. It has no other function except that of adjudicating on a dispute. It is no doubt true that by reason of the nature of the dispute that they have to adjudicate the law gives them wider powers than are possessed by ordinary courts of law, but powers of such a nature do not affect the question that they are exercising judicial power....

THE DELHI CLOTH AND GENERAL MILLS CO. LTD. v WORKMEN

Supreme Court, (1967) I L.L.J. 423

[On a report submitted by the Conciliation Officer, the Delhi Administration referred a dispute between the Delhi Cloth Mills and its

Workmen to the Industrial Tribunal. The terms of reference, in addition to two issues relating to bonus, covered:

"3. Whether the strike at the Delhi Cloth Mills and the lock-out declared by the Management on the 24-2-1966 are justified and legal and whether the workmen are entitled to wages for the period of the lock-out?

4. Whether the 'sit-down' strike at the Swatantra Bharat Mills from 23-2-1966 is justified and legal and whether the workmen are entitled to wages during the period of the strike?"

All the four Unions on behalf of the Workmen in the two mills contended that there was no strike at the Delhi Cloth Mills. Two of them contended that the strike at Swatantra Bharat Mills was in sympathy with the workmen of the Delhi Cloth Mills, while the other two Unions contended that there was a lock-out at Swatantra.

The Tribunal ordered that as the strike covered by issue No. 3 and the sit-down strike covered by issue No. 4 were thus disputed, it had to decide about the existence of these strikes. It allowed the parties to adduce evidence on those two issues.

The Management obtained special leave of the Supreme Court, after unsuccessfully challenging the Tribunal's order in the Punjab High Court, on the ground that the Tribunal could not extend the ambit of its jurisdiction.

[Excerpts from the judgment delivered by Mitter J., follow:]

Under S. 10(1)(d) of the Act, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring "the dispute or any matter appearing to be connected with, or relevant to, the dispute... to a Tribunal for adjudication." Under S. 10(4) "where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its

adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word 'incidental' means according to Webster's New World Dictionary:

> "happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated".

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental, thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. In the light of the above, it would appear that the third issue was framed on the basis that there was a strike and there was a lock-out and it was for the Industrial Tribunal to examine the facts and circumstances leading to the strike and the lock-out and to come to a decision as to whether one or the other or both were justified. On the issue as framed it would not be open to the workmen to question the existence of the strike, or to the Management to deny the declaration of a lock-out. The parties were to be allowed to lead evidence to show that the strike was not justified or that the lock-out was improper. The third issue has also a sub-issue, namely, if the lock-out was not legal, whether the workmen were entitled to wages for the period of the lock-out. Similarly, the fourth issue proceeds on the basis that there was a sit-down strike in the Swatantra Bharat Mills on 23rd February, 1966 and the question referred was as to the propriety or legality of the same. It was not for any of the Unions to contend on the issues as framed that there was no sit-down strike. On their success on the plea of justification of the sit-down strike depended their claim to wages for the period of the strike.

Apart from the consideration of the various decisions cited at the Bar, the above is the view which we would take with regard to issues 3 and 4. We have now to examine the decisions cited and the arguments raised and see whether it was competent to the Tribunal to go into the question as to whether there was a strike at all at the Delhi Cloth Mills or a sit-down strike at the Swatantra Bharat Mills or a lock-out declared by the Management on 24th February, 1966....

[The Court referred to three of its own prior decisions, the first being

Burmah Shell v. Their Workmen, (1961) II L.L.J. 124. There Gajendragadkar J. held that where a reference named a union as a party to the dispute the tribunal could not widen the scope of the enquiry to entertain individual applications from non-members. Certain dicta in Express Newspapers v. Their Workmen (1962) II L.L.J. 227 were also referred to. In that case, the newspaper company transferred its business to another place. The tribunal was asked to adjudicate the justification of the transfer and of the strike and consequent lock-out. The Supreme Court held that if the action of the management amounted to a bona fide closure there was no industrial dispute to be adjudicated. So, it held that the tribunal could as a preliminary issue decide the nature of the management's action. The evidence on record showed that the management had been contemplating the transfer for some time and that the action was really a closure. The Court had observed that merely because the reference called the action of the management a lock-out, the Tribunal need not hold it to be such. The Court now distinguished this case on the score that its facts "were very special and our decision must be limited to those special facts." It quoted:

> Even so, when a question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Thus construed even the inelegant phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the tribunal will have to consider is whether the strike of the respondents on 27th April, 1959 was justified and whether the action of the appellant which followed the said strike is a lock-out or amounts to a closure.... Thus, having regard to the content of the dispute covered by issue 2, it would not be right to suggest that the reference precludes the tribunal from entertaining the appellant's plea that what it did on 29th April is in fact not a lock-out but a closure. The fact that the relevant action of the appellant is called a lock-out does not mean that the tribunal must hold it to be a lock-out.

The last case discussed was Syndicate Bank v. Its Workmen, (1966) II L.L.J. 194. There a term of the reference was whether the imposition of a new service rule on certain offices was justified. If those officials were not workmen, the reference was invalid because there was no industrial dispute. The bank argued that the tribunal's finding that the officers were workmen went beyond the scope of the reference. The Supreme Court upheld the tribunal's finding that the officers were workmen. "If that were not so, there would be no sense in the reference...."

On the order of reference, it was not competent to the workmen to contend before the Tribunal that there was no strike at all; equally, it was not open to the management to argue that there was no lock-out declared by it. The parties would be allowed by their respective statement of cases to place before the Tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The [three] cases... discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the Tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference....

In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under s. 10(4) of the Act it is not competent to the Tribunal to entertain such a question.

In our opinion, therefore, the Tribunal had to examine issues 3 and 4 on the basis that there was a strike at the D.C.M. unit and a sit-down strike at Swatantra Bharat Mill and that there was a lock-out declared with regard to the former as stated in the third term of reference. It was for the Tribunal to examine the evidence only on the question as to whether the strikes were justified and legal. It then had to come to its decision as to whether the workmen were entitled to the wages for the period of the lock-out in the Delhi Cloth Mills and for the period of the sit-down strike at the Swatantra Bharat Mills....

In the result, the preliminary objection of the Management with regard to issues 3 and 4 succeeds....

Problem

Concerning issue No. 3 the Conciliation Officer's Report described

"trouble" in the Delhi Cloth Mills over a claim for bonus, a "demonstration outside the mill" which "became violent"; the "workers left work" the management closed the plant until conditions should become normal. The next day it declared a lock-out.

Suppose you are counsel for the unions and have information that there were no demonstrations and that no workers ever left their work (the Conciliation Officer's report being erroneous on these points). How can you protect the interests of the unions in the light of the foregoing decision?

Consider Sections 10(1)(d) and 33 B. Do they help you? Consider also J. B. Mangaram & Co. v. U. B. Kher, A.I.R. 1956 Madhya Bharat 163; S.I.E.L.R. Organisation v. Madras State A.I.R. 1955 Mad. 45.

BURN & CO., LTD. v EMPLOYEES

Supreme Court, (1957) I L.L.J. 226

[In 1950, the Government of West Bengal referred a dispute over wage scales between the appellant Company and its workmen to a Tribunal, Mr. Palit. He gave an award on 12 June 1950. After one year, and on 12 July, 1951, the employees Union gave notice of termination of the award under Section 19(6), and demanded higher wages. This new dispute was referred to another tribunal Mr. Banerji, on 16 December 1952. Mr. Banerji held that there was no change of circumstances warranting interference with the Palit award. On appeal, the Labour Appellate Tribunal reversed the holding of Mr. Banerji and gave another award. Under special leave the Union and the Company appealed to the Supreme Court, on different issues.

Extracts from the judgment of the Court, delivered by Justice Vankatarama Ayyar, follow:]

It is argued for the appellant company that the Appellate Tribunal was in error in brushing aside the award of Sri Palit and in deciding the matter afresh, as if it arose for the first time for determination, that when once a dispute is referred to a tribunal and that results in an adjudication, that must be taken as binding on the parties thereto, unless there was a change of circumstances, and as none such had been alleged or proved, the award of Sri Palit should have been accepted as indeed it was by Sri Banerji, and the decisions in the Army and Navy Stores, Ltd.,

Bombay v. their workmen [1951-II L.L.J. 31], and Ford Motor Company of India, Ltd. v. their workmen [1951-II L.L.J. 231] were cited in support of this contention. In the instant case, the Labour Appellate Tribunal dismissed this argument with the observation that that was "a rule of prudence and not of law." If the Tribunal meant by this observation that the statute does not enact that an award should not be reopened except on the ground of change of circumstances, that would be quite correct. But that is not decisive of the question, because there is no provision in the statute prescribing when and under what circumstances an award could be reopened. Section 19(4) authorizes the Government to move the tribunal for shortening the period during which the award would operate, if "there has been a material change in the circumstances on which it was based." But this has reference to the period of one year fixed under S. 19(3) and if that indicates anything, it is that that would be the proper ground on which the award could be reopened under S. 19(6), and that is what the learned Attorney-General contends. But we propose to consider the question on the footing that there is nothing in the statute to indicate the grounds on which an award could be reopened. What then is the position? Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it under S. 19(6), and that the tribunal has no option, when the matter is again referred to it for adjudication, but to proceed to try it *de novo,* traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well-recognized principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It is on this principle that the rule of res judicata enacted in S. 11 of the Civil Procedure Code is based. That section is, no doubt, in terms inapplicable to the present matter, but the principle underlying it, expressed in the maximum *interest rei-publicae ut sit finis litium* is founded on sound public policy and is of universal application. [Vide Broom's Legal Maxims, 10th Edn., p. 218] "The rule of res judicata is dictated," observed Sir Lawrence Jenkins, C.J., in Sheoparsan Singh v. Ramnandan Prasad Singh [1916 L.R. 43 I.A. 91; (1916) I.L.R. 43 Cal. 694] "by a wisdom which is for all time." And there are good reasons why this principle should be applicable to decisions of industrial tribunals also. Legislation regulating the relation between capital and labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger

interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated under S. 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour. On the other hand, if we are to regard them as intended to have long-term operation and at the same time hold that they are liable to be modified by change in the circumstances on which they were based, both the purposes of the legislature would be served. That is the view taken by the tribunals themselves in the Army and Navy Stores, Ltd., Bombay v. their workmen [1951-II L.L.J. 31]. and Ford Motor Company of India Ltd. v. their workmen [1951-II L.L.J. 231], and we are of opinion that they lay down the correct principle, and that there were no grounds for the Appellate Tribunal for not following them....

[The order of the Labour Appellate Tribunal was set aside and the Banerji award restored with some modification.]

HAR PRASAD ENGINEERING WORKSHOP v STATE OF UTTAR PRADESH

Allahabad High Court, (1964) I L.L.J. 607

[An industrial dispute about the termination of the service of an employee was referred to the Labour Court. It rejected the employer's request for an adjournment and gave an *ex parte* award.

In this writ petition, the Company contended (1) that the refusal of an adjournment was improper and (2) that the Labour Court failed to go into the merits of the case; and that the award was therefore invalid.

The Court decided the case on the basis of the second point only. Excerpts from the judgment, delivered by G. C. Mathur, J., follow:]

It appears that the workman had sought to prove his case by filing an affidavit but the Labour Court did not take that affidavit into consideration. It purported to follow rule 33(ii) of Chap. IV of the Labour Court (Gorakhpur) Rules, 1957, and without going into the merits of the case it decided the matter against the employer. Rule 33(ii) which is relevant reads as follows:

> "Where any party from whom written statement is so required fails to present the same within the time fixed by the Court the Court may give decision against him, or make such order in relation to the suit as it thinks fit."

According to learned counsel for the respondents, this rule empowered the Labour Court to decide the question referred against a party, which was absent, without going into the merits of the case. This rule, in fact does not, and in law cannot, confer, such a power upon the Labour Court. Section 5C of the Uttar Pradesh Industrial Disputes Act under which, according to learned counsel for the respondents, this rule has been framed, only permits the labour court to lay down its own procedure, and, if rule 33 provides what the learned counsel for the respondent contends it does, then it is clearly ultra vires of S. 5C of the Act. In my opinion, this rule merely permits the labour court to proceed *ex parte* against a party who fails to file a written statement, but it does not empower it to decide the matter without going into the merits of the case. Further, since the dispute referred to the Labour Court was whether the dismissal of Laxmi Narain was justified or unjustified it was incumbent upon it to decide this industrial dispute and without deciding this on the merits it had no jurisdiction to grant any relief to the workman concerned. The Labour Court cannot, by making a rule or otherwise, absolve itself of the duty to determine the industrial dispute referred to it on the merits. The decision of the Labour Court which does not determine the industrial dispute referred to it is not an award within the meaning of S. 2(c) of the Act.

I accordingly allow this writ petition and quash the award of the Labour Court. . . .

Question: Was the court correct in saying that if the Labour Court decided the dispute otherwise than on the merits it had no jurisdiction?

POWARI TEA ESTATE v BARKATAKI

Supreme Court, (1965) II L.L.J. 102

Gajendragadkar, C.J.:- The industrial dispute between the appellant, the management of Powari Tea Estate and the respondents, its workmen, which has given rise to this appeal by special leave, centred round the question as to whether the appellant was justified in terminating the services of three of its employees, D. Barthakur, D. Bora and L. K. Gohain. The respondents contended that the termination of the services

of the said three employees was unjustified, and that they were entitled to reinstatement with back-wages. The appellant, on the other hand, urged that the dismissals in question were fully justified, and that the employees were not entitled to any relief. This dispute was referred to the presiding officer of the labour court, Gauhati, by the Assam Government and the labor court has held that the dismissal of D. Barthakur and D. Bora was justified, with the result that the said two employees were entitled to no relief in the present proceedings. In regard to Gohain, however, it came to the conclusion that his dismissal was not justified and so the appellant was ordered to reinstate him with continuity of service. Against this order, the appellant moved the High Court of Assam under Arts. 226 and 227 of the Constitution, and urged that the impugned order passed by the labour court was illegal and should be set aside. The High Court rejected the appellant's contention and dismissed the writ petition filed by it. The appellant then moved the High Court for a certificate to appeal to this Court, but the said application was rejected. Thereafter the appellant applied for, and obtained special leave from this Court. That is how the appeal has come to this Court.

The main point, which Sri Setalvad for the appellant has urged before us is that in dealing with the case of Gohain, the labour court has purported to exercise appellate jurisdiction in relation to the conclusion reached by the enquiry officer who held a domestic enquiry against Gohain. It appears that on 12 June 1957, Sri Allison, the divisional manager of the appellant, served a charge-sheet on Gohain in which it was alleged that Gohain was guilty of three items of misconduct:

> "It has been brought to my notice," says the chargesheet addressed to Gohain, "that you have been taking money from labourers at the time of payment of their wages and also from assisted emigrant labourers when they want to sign J forms and also from non-workers in the lines."

The chargesheet further added that Sri Allison had checked on the information furnished to him against Gohain and had been satisfied that Gohain had been guilty of the said misconduct. Gohain was, therefore, called upon to offer his explanation why action should not be taken against him for taking bribes from labour on the estate. The charge concluded with suspension of Gohain with immediate effect.

After this chargesheet was served on Gohain, he forwarded his explanation on 15 June 1957. In this explanation, Gohain denied all the three items of the charge and added that he had nothing to do with

the J forms, because it was not his duty to deal with those forms. He contended that since notice after notice was being served on him it appeared that the appellant was determined to victimize him, and he requested that the order of suspension passed against him should be withdrawn.

Sri Allison then held an enquiry against Gohain. At this enquiry, Jagannath Tanti stated that Gohain had taken Rs. 15 from him in order to allow his wife to work on the tea garden, and he added that Chabi Tanti and Chaitto Tanti had witnessed the said payment. Chabi Tanti supported Jagannath Tanti's evidence, but Chaitto Tanti did not. Gohain denied the charge. That is how the evidence adduced in this case stands.

Thereafter on 19 June 1957, Sri Allison served an order of dismissal on Gohain in which he stated that at the enquiry held against Gohain on 15 June 1957, he had been found guilty of illegally taking money from labourers. This order of dismissal was passed under S. 10(a)(3) of the standing orders. It is this dismissal which is the subject-matter of the present appeal. Sri Setalvad contends that in coming to the conclusion that the dismissal of Gohain was not justified, the labour court has, in substance, reappreciated the evidence led at the domestic enquiry, as well as the evidence led before it, and that, he argues, was beyond the jurisdiction of the labour court. The enquiry in this case has been properly conducted. Gohain was given an apportunity to cross-examine the witnesses against him, and the enquiry officer came to the conclusion that the charges had been proved. In such a case, says Sri Setalvad, the labour court cannot sit in judgment over the propriety or correctness of the findings recorded at the enquiry, and inasmuch as the labour court has purported to reappreciate the evidence, it has acted without jurisdiction.

Prima facie, there is substance in the contention raised by Sri Setalvad. The true legal position about the jurisdiction and powers of the industrial tribunal or the labour court dealing with disputes arising from dismissal of industrial employees, is no longer in doubt; and if the decision reached by the labour court could not have been sustained on the ground to which we will presently refer, the criticism made by Sri Setalvad would have justified our interference with the order passed by the labour court. But it appears from the record that the decision reached by the labour court can be justified on another ground to which the labour court has not refered, but which is patent on the record.

It is clear that after Sri Allison held the enquiry on 15 June 1957, he did not make any report at all; all that he did was to issue the order

of dismissal on 19 June 1957. In other words, the enquiry officer held the enquiry and straightaway proceeded to issue an order of dismissal. We have repeatedly held that though domestic enquiries held by employers in dealing with cases of misconduct alleged against their employees need not conform to all requirements of judicial proceedings, they must satisfy the essential requirements of natural justice; and since industrial adjudication attaches considerable importance to the findings recorded by the enquiry officer holding a domestic enquiry in such cases, it is essential that the officer should make a brief report indicating clearly his conclusion and reasons in support of it. It is, of course, not necessary that the report should be elaborate; but however brief it is, it should indicate in a broad way the conclusion of the officer and his reason; otherwise, when the legality or propriety of the dismissal which follows such a report, is put in issue before an industrial tribunal or a labour court, it would be impossible for the tribunal or the court to consider whether the conclusion reached by the enquiry officer was perverse or not. Judicial decisions have established the proposition that if the conclusion reached by the enquiry officer in a domestic enquiry is shown to be perverse in the strict legal sense, that would justify industrial adjudication to examine the merits of the dispute between the parties for itself. Now, how can industrial adjudication deal with the merits of the respondent's argument in the present case that the order of dismissal is illegal unless it is possible to ascertain what the enquiry officer decided after the enquiry was held? It is necessary to emphasize that domestic enquiries held against industrial employees must conform to the basic requirement of natural justice, and one of the essential requisites of a proceeding of this character is that when the enquiry is over, the officer must consider the evidence and record his conclusions and reasons therefor. The fact that the officer who holds the enquiry against a delinquent employee is competent to dismiss him, cannot possibly help to dispense with the making of the report. The report is a document which will have to be closely examined by the industrial tribunal when a dispute such as the present, is brought before it for its adjudication. This question has been considered by this Court in Kharadah & Co., Ltd., v its workmen [1963-II L.L.J. 452] as well as in Balipara Tea Estate, Lokra, Assam v. Gopal Chandra Goswami [Civil Appeal No. 872 of 1962 dated 11 November 1963]. In view of the fact that no report has been made by Sri Allison in the present case, it was competent to the labour court to consider the evidence for itself. It is true that the labour court has not referred to this aspect of the matter; but as we have already indicated, the infirmity in question is patent on the record, and so, it is not open to Sri Setalvad to challenge successfully the course adopted by the

labour court in dealing with the evidence for itself.

In the result, the appeal fails and is dismissed with costs.

Problem

If the only defect in the record had been an inadequacy in the charge sheet such that it did not clearly set forth the offence charged, should the result be the same? What further facts might you wish to know, if any, in order to answer this question?

LABOUR UNION v INTERNATIONAL FRANCHISES
[1966] II S.C.R. 493

[The validity of a service condition requiring unmarried women workers in a particular department to resign on becoming married was questioned in this special-leave appeal from the decision of an Industrial Tribunal upholding the rule. The work in question was in the packing department of a pharmaceutical concern. The Court struck down the rule; the reasoning given by Wanchoo, J., follows:]

Ordinarily we see no reason for such a rule requiring unmarried women to give up service on marriage, particularly when it is not disputed that no such rule exists in other industries. It is also not in dispute that no such rule exists in other departments of the respondent-concern itself and it is only in one department that the rule is in force. It can only be upheld if the respondent shows that there are good and convincing reasons why in this particular department of the pharmaceutical industry it is necessary to have such a rule. The only reason given for enforcement of this rule in this department of the respondent-concern is that the workmen have to work in team in this department and that requires that they should be regular and that this cannot be expected from married women for obvious reasons, and that there is greater absenteeism among married women than among unmarried women or widows against whom there is no bar of this kind.

We are not impressed by these reasons for retaining a rule of this kind. The work in this department is not arduous for the department is concerned with packing, labelling, putting in phials and other work of this kind which has to be done after the pharmaceutical product has been manufactured. Nor do we think that because the work has to be done as a team it cannot be done by married women. We also feel that there is nothing to show that married women would necessarily be more likely to be absent than unmarried women or widows. If it is the

presence of children which may be said to account for greater absenteeism among married women, that would be so more or less in the case of widows with children also. The fact that the work has got to be done as a team and presence of all those workmen is necessary, is in our opinion no disqualification so far as married women are concerned. It cannot be disputed that even unmarried women or widows are entitled to such leave as the respondent's rules provide and they would be availing themselves of these leave facilities. The only difference in the matter of absenteeism that we can see between married woman on the one hand and unmarried women and widows on the other is in the matter of maternity leave which is an extra facility available to married women. To this extent only, married women are more likely to be absent than unmarried women and widows. But such absence can in our opinion be easily provided for by having a few extra women as leave reserve and can thus hardly be a ground for such a drastic rule as the present which requires an unmarried woman to resign as soon as she marries. We have been unable to understand how it can be said that it is necessary in the interest of efficient operation and in the company's economic interest not to employ married women. So far as efficient operation is concerned, it can hardly be said that married women would be less efficient than unmarried women or widows so far as pure efficiency in work is concerned, apart of course from the question of maternity leave. As to the economic interest of the concern, we fail to see what difference the employment of married women will make in that connection for the emoluments whether of an unmarried woman or of a married woman are the same. The only difference between the two as we have already said is the burden on account of maternity leave. But as to that the respondent contends that the reason for having this rule is not the respondent's desire to avoid the small burden to be placed on it on account of maternity leave. If that is so, we fail to see any justification for a rule of this kind which requires an unmarried woman to give up service immediately she marries. We are therefore of opinion that there is no good and convincing reason why such a rule should continue in one department of the pharmaceutical industry. The fact that such a rule exists in other such concerns is no justification, if the rule cannot be justified on its own merits.

Then it is urged that the employer was free to impose any condition in the matter of employment when he employs a new workman and that industrial adjudication should not interfere with this right of the employer. All that need be said in this connection is that it is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial

adjudication to consider the conditions of employment of labour and to vary them if it is found necessary, unless the employer can justify an extraordinary condition like this by reasons which carry conviction. In the present case the reasons which the respondents have advanced and which were the basis of the two decisions referred to earlier do not commend themselves to us as sufficient for such a rule. We are therefore of opinion that such a rule should be abrogated in the interest of social justice.

Lastly it is urged that a similar rule exists in certain government services and in this connection our attention is drawn in particular to r. 5(3) of the 1954 Indian Administrative Service (Recruitment) Rules. That rule reads as follows:-

> "No married woman shall be entitled as of right to be appointed to the Service, and where a woman appointed to the Service subsequently marries, the Central Government may, if the maintenance of the efficiency of the Service so requires, call upon her to resign."

It will be seen that this rule for the Indian Administrative Service is not unqualified like the rule in force in the respondent's concern. It only lays down that where an unmarried woman marries subsequently, the Central Government may, if the maintenance of the efficiency of the Service so requires call upon her to resign. The rule which is in force in the respondent-concern however assumes that merely by marriage the efficiency of the woman-employee is impaired and such an assumption in our opinion is not justified. At any rate this rule for the Indian Administrative Service which has been brought to our notice only for purposes of comparison does not justify the drastic rule that we have in the present case where an unmarried woman is compelled to resign immediately she marries without regard to her continued efficiency.

On a careful consideration of the reasons advanced on behalf of the respondent in support of the existing rule we are of opinion that the reasons do not justify such a drastic rule....

Questions

1. Was the basis of decision interference with any fundamental right? If so, with what right? If not, what was that basis?
2. Did the Court review and reverse the tribunal's decision on the merits? If so, is such action proper in a special leave appeal under Article 136?

3. If not ordinarily proper, does it become proper when the action is taken in the interests of social justice?

MADRAS v C. P. SARATHY
A.I.R 1953 S.C. 53

[Sarathy, the manager of Prabhat Talkies, Madras, was charged with a criminal offence under sections 27 and 29 of the Industrial Disputes Act for instigating a lock out and disobeying an award of an industrial tribunal. South Indian Cinema Employees' Association, a registered trade union whose members are workers in various cinema companies including Prabhat, had presented written demands to the Labour Commissioner, appointed as conciliation officer, for better wages, dearness allowance, and bonus, and a better grievance procedure. He invited the parties to discuss certain minimum terms which he suggested. The managers of Prabhat and five other cinemas accepted those terms; but the managers of other cinemas refused. The Employees' Association, dissatisfied, told the Commissioner that they would strike in one week. At the end of the week he reported a failure of conciliation, and on the same day the Government of Madras referred the dispute in the following words:

"Whereas an industrial dispute has arisen between the workers and the management of the cinema talkies in the Madras city in respect of certain matter.... The Governor of Madras hereby constitutes an industrial tribunal and directs that the said industrial dispute be referred to the tribunal for adjudication." The Tribunal notified the twenty-four cinema companies that they should file statements of position with it and appear before it. It framed twenty-two issues, including: "(3) Is there a dispute between the managements of the city theatres and their respective employees justifying the reference by the Government to the Industrial Tribunal for adjudication? Whether such an objection is tenable in law?"

Prabhat and some other cinemas claimed that there was no dispute between their employees and themselves. But the Tribunal ruled "that even if some of the theatres have got a staff contented with their lot there is a substantial dispute in the industry taken as a whole." It refused accordingly to drop any cinemas as parties.

The Tribunal made its award on the merits, setting terms higher than those which the Commissioner had set. The Government confirmed the award two months later, and declared it binding for one year. Sarathy, manager of Prabhat, refused to comply, and was criminally charged as noted above.

He raised a preliminary objection to the jurisdiction of the Magistrate in the criminal proceeding: that the award was void because of the lack of a dispute permitting a valid reference. The Magistrate overruled this objection. Under Article 226 of the Constitution Sarathy went to the High Court of Madras for a writ of certiorari to quash the criminal proceedings. That Court's Division Bench upheld the objection, and quashed the proceedings. The State of Madras brought this appeal to the Supreme Court.

The judgment of the Court, delivered by Patanjali Sastry, C.J., follows:]

[Dealing with the main contention] On behalf of the appellant, the Advocate General of Madras urged that the question whether there existed an industrial dispute when the Government made the reference now under consideration was an issue of fact which the High Court ought not to have found in the negative at this preliminary stage before evidence was recorded by the trial Court. He submitted, however, that, on the facts already appearing on the record, there could be no reasonable doubt that an industrial dispute did exist at the relevant time. We are inclined to agree. The ten demands set forth in the Labour Commissioner's letter... which were not agreed to by the managements of the 24 cinema theatres in Madras clearly constituted industrial disputes within the meaning of the Act....

[Quoting from the judgment of the Madras High Court.]

"Nor is it correct to say that the disputes, if any, which might have existed between the workmen of the petitioner's cinema and the petitioner himself had not been settled by the petitioner's ready and willing acceptance of terms suggested by the Commissioner".... The learned judges [of the High Court] appear to have assumed that the disputes referred to a Tribunal under S. 10(1)(c)... must, in order that the resulting award may be binding on any particular industrial establishment and its employees, have actually arisen between them. "Analysing the order of reference of the Madras Government now under consideration," the learned judges observe,

> "it is obvious that there is no mention of the existence of any dispute between the petitioner (the first respondent herein) and his workmen.... In fact there was no dispute to be referred to a Tribunal so far as this petitioner is concerned. If, therefore, there was no jurisdiction to make any reference, it follows that the whole reference and the award are both invalid and not binding on the petitioner".

This view gives no effect to the words "or is apprehended" in S. 10(1). In the present case, the Government referred "an industrial dispute between the workers and the managements of cinema talkies in Madras city in respect of certain matters." As pointed out in the Labour Commissioner's letter to the Government, there were 24 cinema companies in Madras, and the Association, which, as a duly registered trade union, represented their employees, put forward the demands on behalf of the employees of all the cinema houses in the city. Fifteen out of 43 workers of the "Prabhat Talkies" were admittedly members of the Association which thus figured as one of the parties to the dispute. In that situation, the Government may have thought, without a close examination of the conditions in each individual establishment that disputes which affected the workmen collectively existed in the cinema industry in the City and that, even if such disputes had not actually arisen in the particular establishment, they could, having regard to their collective nature, well be apprehended as imminent in respect of that establishment also. It is not denied that notices were sent by the Tribunal to all the 24 companies and they all filed written statements of their case in answer to the demands made by the association on behalf of the employees. In these circumstances, it is idle to claim that the Government had no jurisdiction to make the reference and that the award was not binding on the respondent's organisation. The latter was clearly bound by the award under S. 18 of the Act....

[The Supreme Court reversed the High Court decision holding that the reference was incompetent because of vagueness.]

This is, however, not to say that the Government will be justified in making the reference under S. 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry. It is also desirable that the Government should, whenever possible, indicate the nature of the dispute in the order of reference. But it must be remembered that in making a reference under S. 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as [if] it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not

an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where the public interest requires that a strike or a lock-out, either existing or imminent, should be ended or averted without dealy, which under the scheme of the Act, could be done after the dispute giving rise to it has been referred to a Board or a Tribunal (Vide ss. 10(3) and 23). In such cases, the Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to enquire what specific points the contending parties are quarrelling about, and it would seriously detract from the usefulness of the statutory machinery to construe S. 10(1) as denying such power to the Government. We find nothing in the language of that provision to compel such construction. The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as for instance, that it relates to retrenchment or reinstatement. But beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference under S. 10(1) or to specify them in the order.

This conclusion derives further support from Cl. (a) S. 10(1) which provides in the same language for the reference of the dispute to a Board for promoting a settlement. A Board is part of the conciliation machinery provided by the Act, and it cannot be said that it is necessary to specify the dispute in referring it to such a body which only mediates between the parties who must of course, know what they are disputing about. If a reference without particularising the dispute is beyond civil under Cl. (c) why should it be incompentent under Cl. (c)? No doubt the Tribunal adjudicates whereas the Board only mediates.

But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to the legal rights of the parties. Indeed, this notion that a reference to a Tribunal under the Act must specify the particular disputes appears to have been derived from the analogy of an ordinary arbitration. For instance, in 'Ramayya Pantulu v. Kutty and Rao (Engineers) Ltd.' 1949-I Mad. L.J. 231, it is observed:

> "that if a dispute is to be referred to a Tribunal the nature of the dispute must be set out just as it would if a reference were made to an arbitrator in a civil dispute. The Tribunal like any other arbitrator can give an award on a reference only if the points of reference are clearly placed before it".

The analogy is somewhat misleading. The scope of adjudication by Tribunal under the Act is much wider... and it would involve no hardship if the reference also is made in wider terms provided, of course, the dispute is one of the kind described in S. 2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness. The rules framed under the Act provide for the Tribunal calling for statements of their respective cases from the parties and the disputes would thus get crystallised before the tribunal proceeds to make its award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the dispute from the parties before referring them to a tribunal under S. 10(1)....

In the result we set aside the order of the High Court [quashing the criminal proceedings against the first respondent] and dismiss the first respondent's petition.

Appeal allowed.

HOCHTIEF GAMMON v. INDUSTRIAL TRIBUNAL BHUBANESHWAR

Supreme Court, (1964)II L.L.J. 460

[An industrial dispute over payment of bonus by Hochtief Gammon to its workmen was referred to the Industrial Tribunal. The appellant Company was engaged by Hindustan Steel Ltd., to complete some work

under contract. In response to a notice issued by the Tribunal, Hindustan Steel Ltd. appeared in the case but it urged that it was not concerned in the dispute. The appellant argued that Hindustan Steel should be retained as the party really responsible for any bonus, and therefore as a necessary party. The Tribunal ordered that this contention of the appellant be reserved to be decided later, and that Hindustan Steel Ltd. remain in the proceedings. The appellant Company not satisfied with this, moved the Orissa High Court that Hindustan Steel be formally made a party. Unsuccessful in this, it appealed to the Supreme Court under special leave.

Excerpts from the judgment delivered by Gajendragadkar, J., follow:]

The first question which we have to consider is: Did S. 18(b), as it then stood [prior to amendment in 1956], postulate an implied power in the tribunal to add persons as parties to the proceedings who are other than those who were parties to the industrial dispute? It will be noticed that Cl. (a) refers to all parties to the industrial dispute, whereas Cl. (b) refers to all other parties summoned to appear. The word "other" seems to suggest that the parties summoned to appear to whom Cl. (b) refers are not identical with the parties to the industrial dispute specified by Cl.(a). Section 2(k) of the Act defines an "industrial dispute," *inter alia*, as meaning any dispute or difference between employers and workmen; so that parties to the industrial dispute under Cl. (a) would mean persons between whom the dispute has arisen as prescribed by S. 2(k), and so, Cl. (b) contemplates persons other than those who are actually and directly involved in the dispute which is the subject-matter of reference under S. 10. Thus, S. 18(b) seems to contemplate that persons other than parties to the industrial dispute may be summoned before the tribunal.

That takes us to the question as to who can summon these parties. Section 11(3) of the Act prescribes, *inter alia*, that the tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, when trying a suit in respect of the matters specified in Cls. (a) to (d); Cl. (a) refers to enforcing the attendance of any person and examining him on oath; Cl. (b) has reference to the power to compel the production of documents and material objects; Cl. (c) is in respect of issuing commissions for the examination of witnesses; and Cl. (d) is in respect of such other matters as may be prescribed. It is thus clear that the power to add a party to the proceedings pending before a tribunal which may be exercised under the Code of Civil Procedure

under order 1, rule 10, is not included in S. 11(3), and there is no other section which confers such a power on the tribunal. Therefore, if S. (18)b contemplates that persons other than parties to the industrial dispute can be summoned, there is no specific provision conferring power on the tribunal to summon them, and that inevitably suggests that the power must be read as being implicit in S. 18(b) itself.

In this connexion, it is necessary to refer to S. 10 as it then stood....

It is significant that so far as the reference to the tribunal is concerned, S. 10(1)(c) empowered the appropriate Government to refer the dispute to the tribunal, and unlike Cl. (b), this clause did not take within its sweep any matter appearing to be connected with or relevant to the dispute; so that in regard to the power to refer an industrial dispute to the tribunal for its adjudication, the appropriate Government could make a reference of the dispute itself and was not expressly clothed with the power to refer any matter appearing to be connected with, or relevant to, such a dispute. The result of these relevant provisions clearly seems to be that if the industrial tribunal, while dealing with an industrial dispute, came to the conclusion that persons other than those mentioned as parties to the industrial dispute were necessary for a valid determination of the said dispute, it had the power to summon them; and if such persons were summoned to appear in the proceedings, the award that the industrial tribunal might ultimately pronounce would be binding on them. Since in cases where persons were added as parties to an industrial dispute they were likely to raise the question as to whether the joinder of the parties was justified or not, S. 18(b) required that the tribunal should record its opinion as to whether these persons had been summoned without proper cause. Thus we are inclined to take the view that Shri Chatterji is right in contending that S. 18(b), as it originally stood postulates that the tribunal had an implied power to summon parties, other than parties to the industrial dispute, to appear in the proceedings before it. That naturally raises the question about the extent of this power.

In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the industrial tribunal is a tribunal of limited jurisdiction.... It is not open to the tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case.... Act 18 of 1952 made substantial amendments in S. 10. One of these

amendments was that S. 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in Sch. II or Sch. III, to a tribunal for adjudication. In other words, under S. 10(1)(d), the appropriate Government can refer to the industrial tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense, the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the tribunal.

Section 10(4) which was also added by the same amending Act provides, *inter alia,* that the jurisdiction of the industrial tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the industrial tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under S. 18(3)(b) as it now stands.

Section 10(5) has now conferred power on the appropriate Government to add to the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that these establishments are likely to be interested in, or affected by, such dispute. In other words, if an industrial dispute is referred to a tribunal for adjudication, and in the area within the territorial jurisdiction of the appropriate Government there are other establishments which would be affected by, or interested in, such a dispute, the appropriate Government may add them to the said reference either at the time when the reference is initially made, or during the pendency of the said reference proceedings; but, in every case, such additions must be made before the award is submitted. Now, if such persons are added to the reference, the industrial tribunal may, in the exercise of its powers under S. 18(3)(b), summon them to appear before it....

The material words in S. 18(3)(b) are the same as they were originally included in S. 18(b), and so, the implied power which could be exercised by the industrial tribunal under S. 18(b) can now be exercised by it under S. 18(3)(b). If the tribunal thinks that the parties

who were summoned to appear before it were so summoned without proper cause, it may record its opinion to that effect and then the award which it pronounces would not be binding on them.

Reverting then to the question as to the effect of the power which is implied in S. 18(3)(b), it is clear that this power cannot be exercised by the tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government under S. 10(1). What the tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the tribunal to add parties to the reference before it, purporting to exercise its implied power under S. 18(3)(b). If it appears to the tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee; it may direct that other persons should be joined who would be necessary to represent such interest.... The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test may well be, would the non-joinder of the party make the arbitration [adjudicaton?] proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the tribunal to add parties must be held to be limited....

That takes us to the question as to whether the appellant is justified in contending that Hindustan Steel, Ltd., is a necessary party to the present proceedings before the industrial tribunal, and should, therefore, be added as such.... The first contention is that if it is ultimately found that the respondent's claim for bonus for the relevant year is well-founded, as a result of the contract between the appellant and Hindustan Steel, Ltd., the liability to pay the said bonus would rest with the said concern and not with the appellant. The appellant, according to Shri Chatterjee, is a firm constituted only for a single venture... as its agent and in that behalf an agreement has been executed between the parties. Shri Chatterji referred us to some of the relevant clauses of this agreement in support of his plea that the liability for bonus, if established by the respondents against the appellant, would be not the appellant's but of Hindustan Steel, Ltd.... This contention raises an entirely different dispute between the appellant and its alleged principle and such a dispute would be wholly

foreign to the industrial dispute which has been referred to the tribunal for its adjudication.

The next contention raised by Shri Chatterji is that Hindustan Steel, Ltd., is a necessary party because it is the said concern which is the employer of the respondents and not the appellant.... Where the appropriate Government desires that the question as to who the employer is should be determined, it generally make a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and Hindustan Steel, Ltd., is a question incidental to the industrial dispute which has been referred under S. 10(1)(d). This dispute is a substantial dispute between the appellant and Hindustan Steel, Ltd., and cannot be regarded as incidental in any sense, and so, we think that even this ground is not sufficient to justify the contention that Hindustan Steel, Ltd., is a necessary party which can be added and summoned under the implied powers of the tribunal under S. 18(3)(b)....

[The Court ordered that Hindustan Steel be dropped as a party.]

METRO GOLDWYN MAYER (INDIA) LTD. v ITS WORKMEN

Madras High Court, (1964) II L.L.J. 287

[The petitioner Company reinstated two retrenched workmen on an order issued by the High Court. During the proceedings, an agreement for higher wages had been signed by the other workmen except one stenographer, Parameswaran. On reinstatement the two workmen did not sign the agreement, but they demanded wages according to the agreement and later, with Parameswaran, demanded even higher wages at the rate paid by the Company's Bombay office. This last dispute was sponsored by the Union and was referred to the Labour Court. It awarded the Bombay rates requested.

In this writ petition to quash the award the Company alleged that the Labour Court had not considered important points with regard to its jurisdiction, whether the Union had a representative character, and whether this was not an individual dispute rather than an industrial dispute. The Company claimed that these errors appeared on the face of the record.

Excerpts from the decision, delivered by Srinivasan J., follow:]

According to the learned Advocate-General who appeared for the petitioner management, an agreement was validly come to between the workmen and the management.... One of the workmen, that is, the stenographer Parameswaran, did not sign it, though he was paid on he received the salary as revised by this agreement. On the date of this agreement, Eswaran and Bart had not been reinstated. Admittedly, they did not sign the agreement at any point of time. It is argued however that in as much as this agreement represents one that was come to by the majority of the workmen with the management, it must be taken as binding on them as well. In a letter addressed by the management to Parameswaran, it was stated that he was shown the agreement but that he has not seen fit to sign it on the ground that he had to consider the matter.... If the agreement was the result of any mutual consultations between the body of the workmen and the management and the majority of the workmen had agreed to the terms of the agreement, it seems singular to find that the copy of the agreement was "shown" to Parameswaran. That would imply that Parameswaran was not at any time prior to the recording of that agreement aware of it or at any rate was [not] a consenting party thereto. If a majority of the workmen entered into an agreement with the management and seek to bind the minority, it is obvious that the fact that certain consultations are in progress between the body of workmen on the one hand and the management on the other must be brought to the notice of the workmen. If a majority of the workmen entered into an agreement with the management without the knowledge of the minority, it is obviously not an agreement which can be made binding upon the minority. The implied authority which the majority of the workmen have, to bind the interests of the minority can only arise when the minority has a say in the matter effective or otherwise....

It has been argued on behalf of the management that the union which has sponsored the case of the respondent-workmen is a general union and it is not a union representing the workmen of this particular employer. It is also urged that the union claims to represent the interest of only these three employees. According to the learned Advocate-General, before there can be a valid industrial dispute, it must be supported by a majority of workers of this management and it is not sufficient if a general union sponsors the case of these workmen....

The dispute must... be between the employer and the workmen, in the plural... Whether a particular dispute in the form it is brought

is a collective dispute or an individual dispute is essentially a question of fact to be decided in the circumstances of the particular case. It may be that the claims of two workmen out of a hundred may not assume the character of a collective dispute unless it is sponsored by a large number of the remaining workmen. But, in a case where the number of employees is small as obtains in this case, it is difficult to see why a dispute raised by three persons cannot be regarded as an industrial dispute....

It seems to me accordingly that the conclusions reached by the labour court do not suffer from any error of law or of jurisdiction. The petition fails and is dismissed....

[Refer to Workmen v. Dharam Pal Prem Chand (Saugandhi) (1955) I L.L.J. 668 as to when an individual dispute partakes of the character of an industrial dispute].

SITA RAM BAPU RANE v MUNICIPAL CORPORATION

Bombay High Court, (1966) I L.L.J. 588

[On a merger of a tram company with the Bombay Electric Supply and Transport Undertaking, the tram conductors were absorbed as bus conductors. The Company and the representative Union of its workmen agreed that future promotions should be in the ratio of four from former bus conductors to two from former tram conductors. Some of the former tram conductors, petitioners in this case, who were prejudicially affected by the agreement, applied to the Labour Court asking that seniority be the sole basis of promotion. The Union, which had orginally been a respondent, prayed the Labour Court to treat it as the petitioner, because it was the representative of all the workmen of the Company. The Labour Court granted this prayer and transposed the Union accordingly. The original petitioners (tram conductors) appealed to the Industrial Court. It dismissed their appeal. They filed a special civil application in the High Court.

Chainani C. J., who delivered the judgment referred to the Supreme Court decision in Girjashanker Kashiram v. Gujarat Spinning and Weaving Company Ltd. (1962) I L.L.J. 369. There, in consideration of a settlement of a bonus dispute, a representative union had agreed with the management not to press for compensation for discharge of workmen in the event of a closure. About a year later, some workmen claimed such compensation. The Labour Court rejected their application, and accept-

ed the union's contention that the earlier compromise was binding. After the Industrial Court* and the High Court had also rejected intermediate appeals, the matter came to the Supreme Court. Its decision was discussed and relied on by the Bombay High Court. Chainani C. J. said:]

The Supreme Court held that the Act [Bombay Industrial Relations Act, 1946] plainly intends that where a representative union appears in any proceeding under the Act, even though that proceeding might have been commenced by an employee under S. 42(4) of the Act the representative union alone can represent the employee and the employee cannot appear or act in such proceedings. The appeal against the decision of the High Court was accordingly dismissed. In view of this decision of the Supreme Court, we are unable to accept Sri Singhvi's contention [on behalf of the original petitioners] that the representative union... could not appear on behalf of the petitioners.

Sri Singhvi has also contended that the labour court had no power to transpose the union, which had been joined as a respondent in the application, as the applicant. The union, had, however, appeared in its representative capacity. Consequently, it alone could appear on behalf of the petitioner in the application made by them. As the union alone could appear on behalf of the petitioners and as the petitioners could not appear in the application after the union had appeared, the labour court had necessarily to transpose the union as the applicant in the application.

The application therefore fails.

Problems

1. Would this case have been decided in the same way under the Industrial Relations Act, 1947? (The Bombay Industrial Relations Act, under which it was decided, gives special powers to representative unions.)
2. What remedy, if any, is available to the original petitioners?
3. Is this case consistent with Metro Coldwyn Mayer v. Workmen (1964) II L.L.J. 287?

NOTE

A writ of mandamus cannot issue from a High Court to compel the appropriate government to make a reference, if that government complied with the statutory requirement of Section 12(5) that it record and communicate its reasons for its decision, whether the reasons be right or

wrong. It had investigated the claims of three workers; and had communicated its reasons for not referring by a letter. This was not invalid as a wrongful decision on the merits. The government was the body that had to look into the cases and decide whether there were disputes deserving to be referred. These questions were not at all for the court. Madan Gurang v. State of West Bengal, A.I.R. 1958 Cal. 271 (1958) II L.L.J. 206; [1958.59] 14 F.J.R. 340.

BOMBAY UNION OF JOURNALISTS v. STATE OF BOMBAY

Supreme Court, (1964) I L.L.J. 351

[Two journalists were retrenched by their Companies. The Union raised an industrial dispute. The Conciliation Officer tried but failed to resolve the dispute. He submitted his failure report to the Government. The Government, after considering it and the statements filed by the parties, decided not to refer the dispute to an Industrial Tribunal under S. 12(5) of the Act, and informed the parties in writing of their reasons. The Union filled a writ petition in the Bombay High Court. A single judge of that Court dismissed the petition. The Union appealed The Division Bench agreed with the opinion of the single judge and dismissed the appeal. The Union applied for and obtained special leave from the Supreme Court. It contended that the reasons gieen showed that the Government had illegally passed upon the merits.

The judgment, delivered by Gajendragadkar, J., follows:]

This argument must be rejected, because when the appropriate Government considers the question as to whether a reference should be made under S. 12(5), it has to act under S. 10(1) of the Act, and S. 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication, according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted under S. 12(4), the appropriate Government ultimately exercises its power under S. 10(1), subject to this that S. 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made under S. 12(4). This question has been considered by this Court in the case of State of Bombay v. K. P. Krishnan and others [1960-II L.L.J. 592]. The decision in that case clearly shows that when the appropriate Government considers the question as to whether any industrial dispute

should be referred for adjudication or not, it may consider prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the industrial tribunal. Similarly, on disputed questions of fact; the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the industrial tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under S. 10(1) read with S. 12(5) or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under S. 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of termination of services of appellants 2 and 3, cannot be accepted....

Besides, in dealing with this contention, it is necessary to remember that in entertaining an application for a writ of mandamus against an order made by the appropriate Government under S. 10(1) read with S. 12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reasons to a party for refusing to make a reference under S. 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of S. 12(5) appears to be to require the appropriate Government to state its reasons for refusing to make a reference, so that the reasons should stand public scrutiny; but that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the Court in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that

the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt may justify the claim for a writ of mandamus. But the argument that of the pleas raised by the appellants two have been considered and not the third, would not necessarily entitle the party to claim a writ under Art. 226....

The result is, the appeal fails and is dismissed. There will be no order as to costs.

STATE OF MADRAS v FREE PRESS LABOUR UNION

Madras High Court, (1951) II L.L.J. 756

[The Government, by three appeals, came to a Division Bench from the judgment of a single judge of the Madras High Court. The single judge, on a petition by the workers, had held that the Government (having received failure reports from the Labour Commissioner as Conciliation Officer) had not performed its duty of either making a reference of the three disputes or recording its reasons for not doing so. The single judge, had, therefore, issued a mandamus directing the Government to refer the disputes to a tribunal. In its appeal, the Government contended that neither Section 10 nor Section 12(5) imposed a duty on it to refer a dispute to a tribunal and that, therefore, the mandamus could not legally issue.

The Court consisted of the Chief Justice and Mr. Justice Iyer. Excerpts from the judgment of Rajamannar, C.J., follow:]

Admittedly Government did not make any reference; nor did Government record and communicate the reasons for not making a reference. It is clear therefore that Government failed to do the duty cast on them by this statutory provision. They seem to have addressed letters to the Commissioner of Labour, but such communications will not amount to a proper compliance with the requirements of the statutory provision. It is not presented that there was any communication to the parties concerned of any reasons for refusal to make a reference.

[The Court agreed with the remark of the single judge, that the Labour Commissioner's sending word to two of the three employers that they might consider increasing wages, could not be construed as compliance with the requirement of Section 12(5) that reasons be communicated.]

The petitioners were therefore undoubtedly entitled to writs of mandamus directing Government to do their duty. But we do not agree with the

learned judge that it follows that the petitioners are entitled to writs of mandamus directing the State to refer the disputes for adjudication to an industrial tribunal. Having held that Government had failed to discharge the duty cast on them by S. 12(5) of the Act, what the learned judge should have done was to have directed Government by writs of mandamus to discharge their duty, namely, to consider the respective reports of the conciliation officer and if satisfied that there was a case for reference, to make a reference, and if they thought there was no case for reference, then to record the reasons for coming to that conclusion and to communicate the reasons to the parties. Straightaway to direct Government to make a reference would, in our opinion, be tantamount to usurping a power of jurisdiction conferred on and vested in Government by statute.

In this view it is really not necessary to embark on an enquiry as to the interpretation of S. 10(1) of the Act. Before the learned judge it was contended on behalf of the petitioners, and their contention found favour with him, that under that provision if an industrial dispute existed or was apprehended, Government was under a duty to refer the dispute to one or other of the bodies mentioned in clause (*a*), (*b*) or (*c*) of S. 10(1). It was successfully urged before him that the word 'may' in the provision meant 'shall'. We may, however, indicate our prima facie opinion that it appears that, whatever may be the position in other statutes having regard to the language used therein, on the plain reading of section 10(1) along with the proviso thereto, and sub-section (2), there can be no doubt that the word 'may' in sub-section (1) can not be read as 'shall'. In the case of public utility services, when a notice under section 22 has been given, Government shall make a reference unless it considers that the notice under section 22 has been frivolously or vexatiously given or that it would be inexpedient so to do. Equally, under sub-section (2), when the parties to an industrial dispute apply in the prescribed form and Government is satisfied that the persons applying represent the majority, Government shall make a reference accordingly. It follows that in other cases they are not bound to. Our attention was drawn to cases in which in spite of the expression 'may' it has been held that the person or body on whom the power is conferred to do something which is in the interest of the general public... has no absolute arbitrary discretion to exercise or refrain from exercising that power. On the us[illegible]ave trenchant observations of Cotton, L.J., in *In re Baker Nichols* [illegible]ce again [illegible]ters.

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1. 44 Ch.D. p. 262 at 270.

the decision of the

> "I think that great misconception is caused by saying that in some cases 'may' means 'must'. It never can mean must so long as the English language retains its meaning; but it gives a power and then it may be a question in what cases, where a judge has a power given to him by the word 'may', it becomes his duty to exercise it."

It is true that as Lopes J., in the same case points out, the word 'may' is potential and when it is employed there is another question to be decided, namely, whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. In this case we are whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. In this case we are unable to see any such duty. There may be duty in Government to exercise their discretion, but there is no duty cast on them to exercise that discretion in any particular way. However, as we have pointed out earlier in the judgment the statutory provision which directly applies to this case is section 12. It is common ground that conciliation proceedings were initiated under sub-section (1) of that section. Section 12(5) gives no room for argument. It says in express and unambiguous language that on a consideration of the report of the conciliation officer, Government may make a reference or refuse to make a reference. The only requirement is that if it refuses to make a reference, it shall record its reasons and communicate the same to the parties concerned. Now the opening words of section 12(1), namely, 'Where an industrial dispute exists or is apprehended' clearly show that merely because there is an industrial dispute or there is an apprehension of an industrial dispute, it does not necessarily follow that Government should make a reference. If so, section 12(5) would be meaningless; because that sub-section confers a power on Government to choose one of two alternatives, either to make, or not to make, a reference.

In the result, the appeals must be allowed to this extent, namely, that the writs issued by the learned judge against the State to refer the disputes for adjudication to an industrial tribunal should be set aside and in their stead writs of mandamus should be issued against the State of Madras directing them to discharge the duty cast on them under section 12(5) of the Industrial Disputes Act, namely, either to make a reference, or to decide that there should be no reference, in which case reasons should be recorded and communicated to the parties concerned. There will be no order as to costs. We trust that Government will act expeditiously in the matter having regard to the long lapse of

time from the receipt of the reports from the conciliation officer.

BOMBAY LABOUR UNION v STATE OF MAHARASHTRA

Bombay High Court, (1967) *I* L.L.J. 149

[A contract concerning conditions of service between the Company and a representative Union, Respondent 3, was likely to expire on 31st December, 1963. The petitioner Union, affiliated with AITUC, and claiming to represent a majority of the workers, purported to terminate that contract and served a fresh charter of demands, which later went to conciliation. Meanwhile Respondent 3 made a new agreement with the Company covering most of the issues raised by those demands. The conciliator made a failure report.

The petitioner Union, in order to persuade the Government to make a reference under Section 12(5), interviewed, among others, the Minister for Labour. With him it was agreed that the Petitioner might prove that a majority by the workers were opposed to the new contract by getting them to refuse to accept their first pay packets under that contract. Later, the majority of workers were said to have accepted their pay-packets. The Union urged that separate pay-packets, containing the benefits added by the new contract, had been promised but not given; hence it was not practicable for any worker to refuse to accept the new benefits. The Union also claimed that the making of the new contract with Respondent 3 Union was a breach of an agreement made by the Company with the petitioner Union.

Thereupon the Government declined to make a reference, stating as its reason that the new agreement was acceptable to the majority.

In a petition under Article 226 the Union attacked the Government's order denying a reference. Excerpts from the judgment of K. K. Desai, J., follow:]

In connexion with these contentions, it requires to be once again stated that it is now well-settled that it is not permissible for the Courts to question reasons given by the Government for refusing a reference under S. 12(5) of the Act, if the reasons are germane and relevant to the question of reference being made under the sub-section. If the reasons stated are not germane and/or are extraneous, the Courts have power to direct the Government to consider the matter once again without taking into account extraneous and irrelevant matters.

In this connexion, reference may be made to the decision of the

Supreme Court in the case of *State of Bombay* v. *K. P. Krishnan and* others [1960-II L.L.J. 592]. The Court observed:

> "The problem which the Government has to consider while acting under S. 12(5)(a) is whether there is a case for reference. This expression means that Government must first consider whether a prima facie case for reference has been made on the merits. If Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference.
>
> The order passed by the Government under S. 12(5) of the Industrial Disputes Act, 1947, may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; nevertheless if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the Court can issue a writ of mandamus even in respect of such an administrative order.
>
> Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency. It may for instance be open to the Government in considering the question of expediency to enquire whether the dispute raises a claim which is inconsistent with any agreement between the parties, and if the Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. But even in dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances."/

It is clear that it is not permissible for the Court to enter into the question of propriety, adequacy or satisfactory character of the reasons recorded by the Government in the impugned order dated 21 November 1964. The substance of each and all the arguments advanced on behalf of petitioner 1 union in this case is that for inadequate reasons the Government has made a finding that respondent 3 union was a representative union and the majority of the workmen of the company

had accepted the agreement dated 12 August 1964. The whole of the argument relates to the reasons being inadequate and insufficient and having been arrived at without sufficient evidence being available. I am afraid that I am not entitled to go into these matters and arrive at a conclusion contrary to that arrived at by the Government.

Having read each and all the averments in the petition, I have come to the conclusion that evidence was available before the Government in different manners as regards the question of the majority of the workmen having accepted the agreement dated 12 August 1964. The contention that there was no evidence before the Government in that connexion is not well-founded.

It requires to be recorded that the assurances alleged as having been given by the Minister for Labour and the Secretary of the Department have been denied in the affidavit-in-reply of B. V. Laud made on behalf of the State Government.

Under the circumstances, the petition must fail. The rule is discharged with costs.

WORKMEN OF PUNJAB WORSTED SPINNING MILLS v STATE OF PUNJAB

Punjab High Court (1965) II L.L.J. 218

[The Government of Punjab referred a dispute between Punjab Worsted Spinning Mills and its Workmen to the Industrial Tribunal, Patiala. A day before the conclusion of the proceedings, the Mill objected to the Union's participation on the ground that it was not fully representative. In a writ petition, the High Court ordered the Tribunal not to pronounce the award. Meanwhile the State Government constituted another Tribunal for two months at Amritsar and transferred the proceedings to it. The workmen were adversely affected by the transfer and sought relief in this writ petition. The term of the new Tribunal was not extended, and had expired by the time this writ petition was heard.

The order was claimed to be justified as being of an administrative nature such that the State Government had the power to issue it.

Excerpts from the judgment, given by Harbans Singh J., follow:]

The words used in Para. 2 of the transfer order are—

"And whereas on a careful consideration of the merits of the

> case the Governor of the Punjab is of the opinion that *for administrative grounds and in the public interest,* the proceedings in the aforesaid reference... be withdrawn and the same transferred to the second industrial tribunal..." (Italics in quotation.)

In the return filed on behalf of the State, however, it has been explained that while the case was pending adjudication before the industrial tribunal at Patiala, the management filed an affidavit ... before the Secretary to Government, Punjab, Labour Department, expressing complete lack of faith and confidence in the tribunal. The points raised by the management were duly considered by Government who decided to transfer the proceedings to another tribunal for impartial administration of justice under S. 33B of the Industrial Disputes Act, 1947:

> "Since there was no other tribunal in the State ... the second industrial tribunal ... was constituted and the case/s/was/were transferred...."

This return gives altogether a different complexion to the whole thing. This means that on an *ex parte* representation made by one of the parties to the State Government, expressing lack of faith in the Judicial Tribunal, the State Government, without either obtaining the comments of the presiding officer or giving opportunity to the opposite party to put its point of view before the State, decided to transfer the proceedings from one tribunal to the other....

If one only looks at the order transferring the reference, the order appears to be merely administrative. However, this order would be beyond the powers and competency of the State Government in view of a recent decision of the Supreme Court in *Associated Electrical Industries (India) (Private) Ltd.* v. *its workmen* [1961—II L.L.J. 122]. Section 33B of the Industrial Disputes Act, 1947, *inter alia,* provides that the appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceedings under his Act, pending before an industrial tribunal, and transfer it for disposal to another industrial tribunal. In the case before the Supreme Court, the State Government withdrew a case from one tribunal and transferred it to another, saying that "it is expedient to withdraw the case" [without any other statement of the reasons* for doing so.]

The words used in the present impugned order are hardly different from

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* The transfer was set aside on this and other grounds. *Eds.*

the words used in the order of transfer in the case before the Supreme Court. No specific reason is given as to why it had become "expedient or in public interest" to transfer the case.... It was urged on behalf of the petitioners that it was open to the State Government to transfer the case from one tribunal to the other for purely administrative reasons, say, for example, if the work with one tribunal is heavy and the tribunal cannot cope with it, but there can be no administrative reasons for transferring a case after the same had been concluded and only the award was to be given. There was, therefore, a dispute between the mill on the one side and the workmen on the other and if the State Government was going to act on the allegations made against the impartiality of the tribunal, at the instance of one of the parties, it appears incumbent on it to give a reasonable opportunity to the other party to be heard before passing an order of transfer which obviously was going to have serious effects on their rights.... [The order] must be struck down for having violated the principles of natural justice.... [Costs were given against the Mill, by which the appeal had been "mainly defended."]

NOTE

In Kamani Employees' Union v Kamani Engineering Corporation, (1966) II L.L.J. 446 (Bombay High Court) the Union had petitioned, under Articles 226 and 227 of the Constitution, to quash a second reference and to reverse an order of the tribunal overruling the Union's objection to its jurisdiction thereunder..

The first order of reference, by the State Government, was dated 18 December 1962, and included as one of many issues a liberalisation of an existing scheme of production bonus. The Tribunal dealt with the reference, and on 8 January 1964 (over a year later) it heard final arguments closing the case. Ten days later, on 18 January, the Government ordered the same Tribunal to consider a substitute scheme of production bonus. This reference appears to have been made without notice to the Union.

The Tribunal made its award on all issues other than production bonus. It denied the Union's challenge to its jurisdiction to act under the second reference. It announced that its award on production bonus, while not to be postponed as requested, would become an interim award only.

The Court, by Chief Justice Tambe (and Justice Sri Bal) quashed the second reference and overruled the Tribunal's acceptance of jurisdic-

tion thereunder. The Chief Justice reviewed the cases relied on by the Government and the Company and held them inapplicable. Section 10(1)(d) permits a reference of "the dispute or any matter appearing to be connected with, or relevant to, the dispute." The substitute scheme of production bonus was not "the dispute," for the idea of substituting a new scheme had never been considered. This new "matter" may have appeared to the Government, subjectively, to be "connected with, or relevant to," the original dispute, but that subjective opinion needed to be founded on some objective basis.

It is true, as the Government urged, that the new attempted reference would not have deprived the Tribunal of all jurisdiction; but it would have interfered with its jurisdiction by requiring it to consider the substitute scheme and decide about that scheme before deciding about the permanent liberalisation of the old scheme—the dispute originally referred. Such interference was beyond the Government's legal power.

G. CLARIDGE & CO. LTD. v INDUSTRIAL TRIBUNAL BOMBAY

Bombay High Court, (1951) II L.L.J. 1

[O]n 3rd May 1950, the Government of Bombay made a reference for clarification [of an award which had been signed on the 28th September, 1949] to the [same] Tribunal, and a supplementary award was given on 29th September, 1950, which was published by the Government of Bombay. It is true that if the tribunal was *functus officio* after it made its award on 28th September 1949, on the disputes referred to it, and had no jurisdiction to make any further award, then the mere fact that it was at the instance of the petitioners that the Government was induced to make the reference to that Tribunal and a supplementary award was given either with or without an objection raised before the Tribunal, cannot render that supplementary award a valid or a binding award and the publication of that award by the Government under S. 17, Industrial Tribunals [Disputes?] Act cannot invest it with any binding effect. I am, however, unable to accept the argument of Mr. Seervai that the Tribunal became *functus officio* on 28th September 1949 when it signed the award on the matter submitted to it on the reference under S. 10 of the Act. On the scheme of the Act, as I have set out earlier, it appears that under the Act it is open to the appropriate Government to constitute a tribunal under S. 7. The Tribunal so constituted is not an ad hoc tribunal constituted for the purpose of any industrial dispute or class of disputes, but is a permanent tribunal constituted by the Government for adjudication of industrial disputes. It is true that the authority of the Tribunal to give

its opinion on the question or questions referred to it is not derived under any statute or general regulation, but is derived solely from the order of reference which may be made by an appropriate Government under S. 10 of the Act. But the fact that a Tribunal derives its authority from an order of reference to adjudicate upon a dispute does not extinguish the authority of the Tribunal nor does it render the Tribunal *functus officio* when the Tribunal communicates its opinion to the Government which referred the dispute. On disputes being raised, the appropriate Government is entitled to refer those disputes to the Tribunal and the Tribunal may make their award on the disputes referred, and for the purpose of the disputes so referred, and decided by an award, the proceedings before the Tribunal may be deemed to be concluded. But the Tribunal does not become *functus officio qua* that dispute nor does it come to an end with the making of an award. That, in my view, is the scheme of Ss. 10, 15, 17 and 18 of the Industrial Disputes Act, and that view is supported by the provision of S. 11, sub-section (3), which provides that a Tribunal shall have [such] powers as are vested in a civil Court under the Code of Civil Procedure 1908, when trying a suit and every enquiry or inves igation by a Tribunal shall be deemed to be a judicial proceeding within the meaning of Ss. 193 and 228... Penal Code....

In my judgment the provision of sub-section (3) of S. 20 [*re.* conclusion of proceedings] appears to have been made only for providing a terminal for the purposes of S. 23 [forbidding strikes] and other provision of the Act. If it was intended by the legislature that the Tribunal was to come to an end or was to be*functus officio* as soon as an award was made on the adjudication of the dispute referred to it, then it would have been easy for the legislature to have made an express provision to that effect....

If the Tribunal does not become *functus officio* or the Tribunal does not come to an end then, in my judgment, it would be possible for the Tribunal in certain circumstances to consider any matter which may arise out of the award.

[The reference for clarification was therefore held intra vires.]

METTUR INDUSTRIES LTD. v SUNDARA NAIDU
Madras High Court, (1963) II L.L.J. 303

There was an industrial dispute, Industrial Dispute No. 62 of 1957, pending between the petitioner and its workers. The award in that dispute was passed on 13th March 1958 and was published on 2 April 1958 and by 2 May 1958 the tribunal had become *functus officio*. In the meanwhile the petitioner had to take disciplinary action against one of its work-

men, respondent 1 to this petition. It therefore started proceedings and on 2 February 1958 it dismissed him from service for misconduct. The order was to come into operation from 4 February 1958. Thereupon, the petitioner applied to the industrial tribunal for approval of its action under S. 33 (2)(b) of the Industrial Disputes Act. The provisions of the proviso had been complied with by the payment of one month's wages to the employee. That application was Petition No. 2 of 1958. The industrial tribunal went into the matter but on a full consideration of the facts declined to grant the request of the petitioner to approve the action in regard to the removal of respondent 1. The legality of that order is questioned in these proceedings.... Petition No. 2 of 1958 is interlocutory in nature, the main matter before the tribunal being Industrial Dispute No. 62 of 1957. After the termination of the proceedings in Industrial Dispute No. 62 of 1957 there would be no competence in the tribunal to dispose of Petition No. 2 of 1958. As I stated already, the industrial tribunal became *functus officio* in regard to Industrial Dispute No. 62 of 1957 by 2 May 1958. It had, therefore, no jurisdiction on 7 July 1958 to deal with an interlocutory matter when the main matter had already been disposed of. The jurisdiction under S. 32(b) is given to the tribunal only because of the pendency of the main dispute.

In a recent decision of the Supreme Court in *Martin Burn, Ltd.* v. *Banerjee* (1958-I L.L J. 247) a similar situation arose. The Supreme Court observed at p. 250 that as the industrial tribunal had become *functus officio* on the expiry of the thirty days from the publication of its award in the dispute which was then pending before it, the application [for permission to terminate the services of a workman] could not be disposed of and was, therefore, properly struck off. I am of opinion that the same result will follow in the present case. On the date when the tribunal purported to dispose of Petition No. 2 of 1958, it had no jurisdiction to do so as it had become *functus officio*....

PROBLEMS

1. The appellate court remands a case to the tribunal for disposal according to law. It is contended that the tribunal has no jurisdiction to deal with that dispute afresh. Has the tribunal jurisdiction or has it become *functus officio*?
2. The Government prescribes a particular date for the submission of the award. By the addition of a few more issues, the time was extended. A fresh notification including all the issues was made and a fresh time was fixed after the submission of the award.

Has the tribunal become *functus officio*? [See Straw Board Mfg. Co. Ltd. v. Gupta Mill Workers' Union (1953) I L.L.J. 186].

3. Are the two leading cases given above irreconciliable. If not, what distinction do you suggest?

RAMASUBBU v RANI MOTOR WORKS
Madras High Court, (1964) I L.L.J. 249

[In a claim proceeding for retrenchment compensation under s. 25F, the workman, did not consent to the engagement of a lawyer by the proprietor. The Labour Court found that Ss. 36(3) and 36(4), dealing with representation of parties by lawyers did not apply to a claim proceeding because it was not an industrial dispute. The Court permitted the proprietor to engage a lawyer. The workman petitioned the High Court to quash the order.

Excerpts from the judgment, delivered by Srinivasan J., follow:]

Whatever may be the nature of the claim that may be put forward by a workman under S. 33C., it is left to the determination of the labour court, and consequently, even a proceeding under S. 33C must be a proceeding before the labour court. It is undoubtedly a proceeding under this Act. It is true that the word "dispute" has not been independently defined, but only the expression "industrial dispute" in S. 2(k) of the Act....

An industrial dispute, therefore, means a dispute of a particular kind between specified parties. Such disputes cover a wide area being defined to mean any dispute which is connected with the employment or non-employment or the terms of employment. Undoubtedly, the expression "connected with the employment or non-employment" is sufficient to take in a claim to retrenchment compensation, for it is a relief arising by reason of the non-employment of the worker. When, therefore, S. 36 uses the expression "dispute" instead of "industrial dispute," it does not mean anything different from what is contemplated in the definition sections. A proceeding before a labour court, tribunal or national tribunal must necessarily stem from the provisions of the Act. Sub-section (4) S. 36 uses the expressions "in any proceeding before a labour court," "party to a dispute" and "may be represented." Giving full effect to the meaning of all these expressions, which require a technical construction in the context, a proceeding under S. 33C(2) of the Act undoubtedly involves a dispute within the meaning of the Act and sub-section must, therefore, apply.

It follows that the labour court was in error.... The order is

quashed....

BIHAR JOURNALS LTD. v CHAUDHARI H. K.

Patna High Court, (1966) I L.L.J. 789

[In a dispute between the workmen of Bihar Journals Ltd. and the Management, the Industrial Tribunal permitted the Union representative to appear before it. On this ground (and on one other ground) the Company petitioned the High Court to quash the Tribunal's order.

The Company had objected to the appearance of a particular advocate. Thereupon the Union had prayed the Tribunal for an adjournment of the hearing. Later, the same advocate was duly appointed vice-president of the Union and thus became eligible to appear under Section 36(1)(a) in the adjourned hearing. The Company contended that this nomination was made to circumvent its objection. An extract from the judgment, delivered by Mahapatra P., follows:]

There is no material before us except the fact, as noted in the order of the tribunal that Shri Ranen Roy was nominated as a vice-president of the Union in place of the previous vice-president, who resigned, and that the acceptance of the resignation and nomination by the president of Sri Ranen Roy and approval of that nomination by the executive committees were on the same date. If we have to hold that it was really a circumvention of S. 36(4) of the Act, we will have to hold that Sri Ranen Roy, an advocate and legal practitioner, allowed himself to be an active participating agent in the act of circumvention of the provisions of law. Before we can do so there ought and must be proper and fuller facts before us; otherwise it would be a censure of larger consequences, based on inadequate or no materials. On the facts of this case, therefore, I cannot say that there was any attempt or in fact, any circumventing of the provisions of S. 36(4) of the Act either by Sri Ranen Roy or by the union or by both of them....

PROBLEM

Suppose that the appointment of Sri Ranen Roy had contained the words "is appointed vice-president for the purpose of making him eligible to represent this union in litigation." Would the result of the case have been otherwise?