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**(1979) 09 KL CK 0021**  
**In the High Court Of Kerala**  
**Case No : O.P. 2849 of 1977-E**

Abdul Rahiman Haji

APPELLANT

Vs

Abdul Rahiman and Others

RESPONDENT

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**Date of Decision :** 18-09-1979

**Acts Referred:**

**Citation :** (1979) 09 KL CK 0021

**Hon'ble Judges :** Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

**Bench :** Division Bench

**Advocate :** Varghese Kalliath and Joseph Vadakkal, for the Appellant; M. Ramachandran, K. Mohammed and K.R.B. Kaimal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Gopalan Nambiyar, C.J.—In connection with the denial of work to the 1st Respondent, claimed by the Petitioner to be merely its customer, the question seems to have engaged the attention of the Government as to whether a reference had to be made for adjudication to the Labour Court. By Ext. P-1 order dated 2nd May 1977, the Government refused to refer the matter. But it seems to have had second thought on the question; and by the impugned order Ext. P-2, dated 30th June 1977, chose to refer the dispute for adjudication to the Labour Court, Quilon. In view of the recent decision of the Supreme Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, . Counsel for the Petitioner very fairly stated that it cannot usefully urge the contention that Ext. P-1 order will be a bar to the Government's exercising the right of reference over again or in its reversing its original conclusion that there was no ground to make a reference, and in holding to the contrary. As was pointed out by the Supreme Court in the recent decision, and even on earlier occasions, by the exercise of the power once, the source of the power is not dried up, so as to prevent or preclude its exercise on a second or a subsequent occasion. Also, the reference of the dispute being essentially dependent upon the existence or the apprehension of an industrial dispute, nothing prevents these

conditions springing up, although they stood not satisfied a moment before. Therefore nothing turns on the question of the Government having decided to make the reference for adjudication of a dispute, which, sometime previously, it held unworthy of reference. But, what was stressed by Counsel for the Petitioner was, that if it does decide to make the reference, particularly in the background of the facts practically admitted in this case, the Government had an obligation to observe the rules of fair play and to afford the Petitioner an opportunity for explanation. There is no controversy that the subsequent order Ext. P-2 referring the dispute was prompted by the intervention of the Secretary of the Union, who seems to have taken up the matter with the Minister of Labour. The Petitioner's grievance is that in respect of the representation thus made by the Union to the Minister, the Petitioner should have been afforded an opportunity for explanation to satisfy the Minister that there was no case for reference of the dispute for adjudication. The contention thus advanced by the Petitioner's counsel stands directly covered against the Petitioner by a Division Bench ruling of this Court in *E.T. Varghese v. Secretary, Estate Staffs' Union of South India and Ors.* 1976 KLT 842. After discussing the position, the Division Bench observed:

5 ...When the administrative action is such as is contemplated by the provisions of the statute in Section 10(1) the interference must be even more limited and we do not think that the development of the law has in any way whittled down the well-established principles in regard to the scope of interference in such matters. We do not think this Court would be justified in interfering with an order of reference u/s 10(1) on the mere ground that the order has been passed after an earlier order refusing to refer without being given an opportunity to the employer to state his case why the earlier view taken by the Government should not be altered.

Counsel for the Petitioner rightly stressed before us that the above observations were obiter, as the Division Bench in the immediately following paragraph clearly found that the Petitioner had been given ample opportunity to state his case. While this is undoubtedly so, the principle stated by the Division Bench, is worthy of notice. The principle is also supported by other decisions, such, for instance, as the decision of the Karnataka High Court in *Kirloskar Electric Co. Limited's* case 1974 (2) L.L.J. 537. Counsel for the Petitioner invited our attention to the pronouncement by a Division Bench of the Madras High Court in *Tiruchy Steel Rolling Mills Ltd. v. S. Gnanasambandan and Ors.* 1974 (1) F.J.R. 158 . The Division Bench there, no doubt, took the view on the special facts proved, that a reference for adjudication should have been made only after affording the aggrieved Petitioner an opportunity for explanation. It is enough for us to state that we are not prepared to go so far and to lay down such a universal principle. We do not think the decisions of the Supreme Court cited by Counsel for the Petitioner or the passages from the treatises which were freely indented oblige us to go to this extent. Counsel for the Respondent, besides inviting our attention to *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, also referred us to the earlier pronouncement in *Western India*

Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, (para 9) and Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, . Both these decisions state the principle that a prior refusal to refer a dispute for adjudication will not be a bar to the Government's making a reference subsequently. There is a decision of a Division Bench of the Andhra High Court in Srikrishna Jute Mills's case 1977 (2) L.L.J. 363 which is directly in point in regard to the position that arises for determination here. It was there ruled that if the Government chose to re-consider its earlier decision not to refer the dispute for adjudication, it was not necessary to give notice to the employer of the proposed action, because no civil rights of any parties are being adjudicated upon. On principle, the position thus stated seems to be correct; because the Government is only weighing the position in order to be satisfied whether an industrial dispute can be said to exist or is apprehended. In these circumstances, we see no ground to interfere with the impugned order Ext. P-2. We dismiss the writ petition with no order as to costs.

2. Leave to appeal to the Supreme Court is orally prayed for. We do not think any substantial question of law of general importance arises in this case. We refuse to grant leave to appeal to the Supreme Court.