

(1976) 03 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Petition Appeal No's. 945 of 1971 and 1308 of 1974

Associated Traders and Engineers Pvt. Ltd.

APPELLANT

Vs

Bir Singh and Others

RESPONDENT

Date of Decision : 01-03-1976

Acts Referred:

Citation : (1976) ILR Delhi 688

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : Anand Prakash, M. Kapoor, Vinay Sabharwal, Jagat Arora, S.S. Dalal and B.I. Singh, for the Appellant;

Judgement

H.L. Anand, J.

(1) The common question that these two petitions under Articles 226 and 227 of the Constitution of India, by the management of M/s. Associated Traders & Engineers Pvt. Limited and Gestetner Duplicators Private Limited, raise is as to the territorial limits of the power of an appropriate Government to refer an industrial dispute to adjudication u/s 10(1) of the Industrial Disputes Act, 1947, hereinafter to be called "the Act". The petitions were filed in the following circumstances :

(2) Associated Traders & Engineers Pvt. Limited, the petitioner in C.W.P. No. 945/71, is a motor transport undertaking carrying on the business of goods transport service in the various parts of India- The Head Office of the Company is in Delhi with over 50 branch offices all over the country. The Company employs about 900 employees in the Head Office and the various branches. According to the Company, in the day to day administration, all the branches function independently subject to the overall control and supervision by the Head Office. It is contended that the control over the staff in the branches including supervision, grant of leave, disbursement of salary and recruitment vests in the Branch Managers concerned although for the purpose of control and "record

keeping" at the Head Office, all appointments and termination orders are issued from there. It is further contended that the salary bills are prepared and disbursements are made at the respective branches but for the purpose of "record keeping" and "costing", the salary bills are sent to the Head Office where after the payment is made at the Branches. The Company prepares one consolidated balance sheet and bonus is paid at the branches on the basis of the profit and loss account of the Company as a whole. In December, 1967, the Delhi Private Motor Transport Workers Union, a Union in the industry registered in Delhi, submitted to the management at the Head Office in New Delhi of the Company in New Delhi a charter of demands on behalf of the employees of the company, who are employed in its Kanpur Branch. On the demands being turned down, the conciliation proceedings were initiated by the Conciliation Officer, Delhi, which having failed, the Delhi Administration, by notification of January 4, 1969, referred the industrial dispute between the workmen and the management of the company to the Delhi Industrial Tribunal, Delhi (Annexure B). In the proceedings on the reference, the Company raised preliminary objections with regard to the competence of the Delhi Administration to make the reference and as to the consequential lack of jurisdiction in the Tribunal to adjudicate upon is, as to the locus standi of the Union to take up the cause of the Kanpur employees ; and as to the impact of pendency of certain proceedings before the Kanpur Conciliation Officer on the reference. On the basis of the aforesaid preliminary objections the Tribunal framed the following preliminary issues:

"1.Had Delhi Administration jurisdiction to make the present reference and has this Tribunal jurisdiction to adjudicated upon the same ?

2.Has Delhi Private Motors Workers Union locus standi to raise the present dispute in regard to the workmen employed at Kanpur ?

3.Are the demands to which the present case relates subject matter of proceedings before Shri S. K. Malhotra, Conciliation Officer, Kanpur, if so, its effect ?"

By an order of May 21, 1971 (Annexure A), the Additional Industrial Tribunal, Delhi, held on the first two issues, negating the contention of the petitioner to the contrary, that the Kanpur branch of the Company "is not an independent unit but part and parcel of Delhi establishment," in view of the unity of management, supervision and control- In arriving at the aforesaid conclusion, the Additional Industrial Tribunal purported to apply the test laid down by the Supreme Court in the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, and held that the order of reference was competent and consequently, the Tribunal had the necessary jurisdiction to adjudicate and the Union had the necessary locus standi. On the third preliminary issue, the Tribunal expressed the view that it was of little consequence at this stage of the proceedings "whether the demands to which the present case relates are subject matter before the conciliation officer, Kanpur" and that if a dispute was eventually referred to a U.P. Tribunal pursuant to the

failure of conciliation proceedings which relate to the disputes forming subject matter of the present reference "one of them can be stayed". By the petition, the company challenges this order on the grounds that :

(A)The Delhi Administration was not the appropriate Government to make the reference inasmuch as

(I)no part of the cause of action could be said to have arisen within the territorial limits of the Union Territory of Delhi so as to entitle it to exercise the power u/s 10 of the Industrial Disputes Act ;

(II)The Kanpur branch office of the petitioner was an independent establishment within the meaning of industrial law and the cause of action for the dispute having arisen within the territorial limits of Kanpur, the Uttar Pradesh Government alone was the appropriate Government for the purpose of a reference ;

(B)the Delhi Private Motor Transport Union, a Delhi based Union had no locus standi to raise the dispute on behalf of the Kanpur employees ;

(C)in view of the pendency of conciliation proceedings in Kanpur in respect of the disputes forming subject matter of the reference, the reference was incompetent; and

(D)the order of reference being invalid, the Delhi Industrial Tribunal had no jurisdiction to deal with it.

(3) Gestetner Duplicators Pvt. Ltd., the petitioner in C-W.P. No. 1308/74, is a company incorporated under the Indian Companies Act having its registered office in Calcutta. Its administrative Head Office is in Delhi and sales offices in the various parts of India. Shri K. Mohan Singh, the workman concerned, who is respondent No. 2 in the petition, was appointed by the company in August, 1958. as a Stenographer in its Regional Office, at Delhi, as the Delhi office was then called. In 1968, he was transferred to Kanpur Office of the company as Branch Accountant and thereafter on May 1. 1969 to Hubli. The workman challenged his transfer to Hubli and sought the intervention of the Civil Court in Delhi to restrain the company from giving effect to the transfer but eventually withdrew the action after the interim injunction was declined. Thereafter the workman was put on duty at Hubli. He worked there for sometime and came on sick leave to Delhi and sought his transfer back to Delhi on account of illness of his wife. Either on account of illness of his wife or otherwise, he overstayed the period of leave on account of which he was charge sheeted and as a result of the departmental enquiry was eventually dismissed from service. The charge sheet was issued in Hubli where also the enquiry was held and the final order was made. The workman then made a representation to the General Manager of the company at New Delhi seeking reinstatement, and when that was turned down, the Union sought his reinstatement as steno-typist-cum-accountant at Delhi which was also rejected by the company at Delhi. On the failure of the conciliation proceedings

at Delhi, the matter was referred to the Labour Court, Delhi by the Delhi Administration. In the proceedings on the reference, the management raised a preliminary objection with regard to the competence of the Delhi Administration to make a reference and the consequent lack of jurisdiction, of the Labour Court, Delhi. On the preliminary objection, following preliminary issues were framed:

"1. Whether the Court lacks jurisdiction as no part of the cause of action arose within its jurisdiction ?

2. Whether Delhi Administration is not the appropriate

By an order made on September 17, 1974 (Annexure 1), the Labour Court, Delhi, held, negating the contention of the management to the contrary, that the Delhi Administration was the appropriate Government for the purpose of the reference and the Labour Court did not, Therefore, lack jurisdiction to deal with the matter. The Labour Court justified the competence of the Delhi Administration, as well as its jurisdiction, on the basis of the twin test of residence of the parties and situs of the cause of action. On the second test, it was further held that the cause of action would be deemed to have arisen "where the demand is made and refused". The Labour Court further observed that since the Administrative Head Office of the Company was in Delhi, the Company would find it more convenient to deal with the dispute in Delhi and was, Therefore, acting unreasonably in raising a technical objection as to its jurisdiction. In arriving at the aforesaid conclusion, the Labour Court sought support from the decisions of the Bombay High Court in the Case of Lalbhai Tricumlal Mills Ltd. v. Vin.(D.M.) & others, (1956) I L.L.J. 557 and the Supreme Court in the case of The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, ; Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others, and a decision of this Court in the case of Messrs. Spencer and Company Ltd. v. Delhi Administration, Delhi and others, 1975(5) F L R76. The company challenges this order of the Labour Court on the grounds that :

(A) the scheme of the Industrial Disputes Act does not admit of multiplicity of appropriate Governments;

(B) the sole test for the determination of the competence of an appropriate Government to make a reference is if the cause of action for the reference arose within its territorial limits;

(C) the cause of action in relation to an industrial dispute is said to arise where the action of the management leading to the industrial dispute is to operate and that the residence of the parties or the place where the demand may have been made or rejected are wholly irrelevant :

(D) in case the action is taken by the management in a place other than its Head Office or registered office, the cause of action would be deemed to have arisen at such a place if the management could be legitimately said to have an independent "establishment" in that place and in such a case the situs of the

registered office of a company or its Head Office or Administrative Office would be wholly irrelevant.

(4) The petitions are opposed on behalf of the workmen of the petitioners and the impugned, orders are sought to be justified mainly on the grounds on which they purport to be based.

(5) The first question that requires consideration is whether in the scheme of the Act there can only be one appropriate Government in relation to an industrial dispute and the Act does not, Therefore, admit of multiplicity of authorities who would be competent to make a reference. This contention was primarily raised with a view to provide a basis for the further contention that the twin test of situs of the cause of action and of the residence of the parties incorporated in the CPC has no application to industrial law and that the sole test to determine the power of the appropriate Government to make a reference was if the dispute arose within the territorial limits of a State. It was, Therefore, contended that since the only test was as to where the dispute arose the concept of multiple appropriate Governments was wholly foreign to industrial law. In support of the contention it was urged that the concept of multiplicity of appropriate Governments would lead to anomalous results in that the pendency of parallel proceedings in tribunals in different states with regard to the same matter, and the consequent possibility of conflicting awards by these tribunals, would create considerable confusion and, having regard to the law relating to the binding effect of the various Awards, it will be difficult to say as to which Section of the workmen in an industry would be governed by which of the various Awards on the common question. It was further urged that such a situation would be pregnant with considerable mischief because if the reference was turned down by one Government, the workmen owing allegiance to a party which may be in power in another State could then take the matter to that State. Such a result, it was contended, could not have been envisaged by the legislature.

(6) This contention appears to be quite plausible but does not stand closer scrutiny. The multiplicity of appropriate Governments in relation to any industrial dispute is not linked with the multiplicity of tests to determine the power of the appropriate Government. It is true that if the territorial limits of the power of the State Government to take seizen of an industrial dispute is based on the twin tests of cause of action and the residence of the parties, it is likely to lead to multiplicity of appropriate authorities where the situs of the cause of action and the residence of the parties do not coincide. It does not, however, follow that even if one were to accept the doctrine of solo test for the determination of the territorial limits of the power of the State Government to deal with an industrial dispute it would necessarily lead to the conclusion that there could be only one appropriate Government in relation to a given industrial dispute. Even an application of the test of situs of cause of action may lead to multiplicity of appropriate Governments where, for example, the action taken by the management of a Company operates in the territories of more than one States of

India in relation to matters which equally effect the workmen employed in different branches or units of the company. In such a case action taken by the Company at its Head Office would operate with the same force and have the same effect in the different States of India where the workmen concerned are working and the condition for the exercise of the power by the appropriate Government would be satisfied in each of the States and each one of the State Governments concerned would be equally empowered, as indeed obliged, to take up the matter and act in relation to it. If that be so, the test as to the residence of the parties could not be excluded merely because such a test may lead to multiplicity of authorities competent to deal with the matters. The fear that the multiplicity of appropriate Governments may lead to anomalies, confusion and an extraordinary situation appears to me to be more imaginary than real. If more than one State Government is competent to deal with the matter it does not necessarily follow that in actual practice all of them or some of them are bound to make reference and even if such references are made, the tribunals are bound to go on with the proceedings unmindful of the pendency of parallel proceedings in one or more other tribunals. In actual practice each of the State Governments seized of the matter would ordinarily be aware that one or more other State Governments was dealing with a similar situation. The management of the company would be common and even if conceptually the different units of a company constitute different establishments and workmen may be represented by different unions, the possibility of proper coordination could not be excluded. Lastly the Central Government has ample powers u/s 10(IA) of the Act to step in and refer the matter to the National Tribunal and once that is done by virtue of the provisions of sub-section (6) of that Section all the other references become infructuous. To an extent the situation could be adequately dealt with even otherwise by transfer of proceedings from one Tribunal to the other u/s 33-B of the Act. In any event if more than one Tribunal were seized of the matter the proceedings could go on in one of the tribunals and the proceedings in the other could be suitably stayed on the principle analogous to those incorporated in Section 10 of the Code of Civil Procedure.

(7) There is nothing in the concept of multiplicity of authorities which may be either inconsistent with any provisions or the scheme of the Act or contrary to the object sought to be achieved by it. The Act, which according to its preamble, is an Act to make provision for investigation and settlement of industrial disputes and for certain other purposes, is a piece of social legislation intended to strike a reasonable balance between the imperative of social justice to the working people and the need to maintain uninterrupted production in national interest. This is sought to be achieved by expeditious adjudication of industrial disputes so as to maintain industrial peace and prevent industrial disharmony. It is, Therefore, of utmost importance that where an industrial dispute exists or is even apprehended any State Government within whose territory the situation arises that calls for intervention should be competent to deal with the matter so as to ensure industrial peace even though a similar situation may exist in other

States. I am unable to see how the existence of more than one l

(8) The next question is as to the territorial limits of the power of the State Government to make a reference. On behalf of the petitioners it was contended that the sole test for the determination of such a question was whether the dispute substantially arose within the territorial limits of a particular state or not. It was contended that the cause of action in relation to an industrial dispute could be said to have substantially arisen not necessarily where an action was taken, which lead to the industrial dispute, but where the action leading to an industrial dispute was to operate and that the situs of the residence of the parties or of the places where demand may have been made or rejected was wholly irrelevant for the determination of the question. It was further contended that the law relating to the jurisdiction of an (appropriate Government envisaged a nexus between an industrial dispute and the State and not between the industry and the State so that once an action operated within the limits of a particular State the fact that the Head Office of the company or its registered office was outside the State was irrelevant so long as the unit functioning within the State was or could be said, in terms of industrial law, to constitute an establishment. On the basis of these abstract propositions it was contended on behalf of the managements that the dispute substantially arose in the aforesaid sense outside the Union Territory of Delhi and that the administration of the Union Territory of Delhi had no jurisdiction to take seizen of the matter. On the other hand it was contended on behalf of the workmen that on the analogy of the CPC the jurisdiction of a State Government to make a reference would be determined either by the situs of the cause of action within the limits of the States or the situs of the parties and that the test of residence of the parties had not been excluded from industrial law either expressly or by necessary implication. It was further contended that neither of the units of the companies in the two cases could be said to constitute independent establishments. In the case of Gestetner it was further contended that the situs of the employment was Delhi because that is where the workman was employed and merely because he was transferred out of Delhi and dealt with beyond its territorial limits, the situs of employment did not undergo any change. It was further contended that in both the cases the demand arising out of the action of the management was raised in Delhi with the management of the respective companies and that it was in Delhi that it was rejected bringing into existence a dispute and that, Therefore, Delhi Administration was competent to make the references.

(9) What then is the true test to determine if a particular State Government would be an appropriate Government in relation to an industrial dispute. The general principles for the determination of the territorial jurisdiction of a Court to entertain a cause are laid down in Section 20 of the Code of Civil Procedure, which provides that a civil suit may be filed either in the Court within whose territorial jurisdiction any part of the cause of action arises or defendant resides or carries on business. The Code incorporates a two-fold test: of situs of the cause of action and of the residence of the defendant. In the case of a corporate

body, Explanation to Section 20 provides that where a company has a branch office then in relation to the cause of action in that branch the company would be deemed to reside at the place where it has its branch office. However, while considering if the State Government was competent to make a reference or not we are not dealing with the problem of determining the jurisdiction of Courts but with the territorial limitation on the power of an executive authority, namely, the State Government. Strictly speaking, Therefore, the analogy of the jurisdiction of a Court would not apply and the basis on which the jurisdiction of a judicial forum may ordinarily be determined could perhaps provide a mere guide to resolve the question. If that be so, one must turn primarily to the provision, which confers the power to make a reference and to the constitutional limitations on the extra-territorial power of a State for a possible clause as to the true test to determine the territorial limits of the powers of the State Government.

(10) Section 10(1) of the Act empowers the appropriate Government to make a reference "where" it "is of opinion that any industrial dispute exists or is apprehended". Section 10(IA) similarly empowers the Central Government to refer an industrial dispute to "a National Tribunal" "whether or not it is the appropriate Government in relation to that dispute" if it "is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such a dispute and that the dispute should be adjudicated by a National Tribunal". The reference may be made by an appropriate Government to "a Board", "a Court of enquiry", "Labour Court", "a Tribunal" and by the Central Government to "a National Tribunal". These bodies could be constituted by an appropriate Government under Sections 5, 6, 7, and 7A of the Act except the National Tribunal which can be constituted by the Central Government alone u/s 7B of the Act. According to the Constitution, India is a union of States (Article 1) and the State.- and their territories are specified in the First Schedule to the Constitution (Article 2). Our Constitution, being federal in nature, is based on a clear and rigid demarcation of functions between the States, on the one hand, and the Union, on the other. By virtue of Article 154 of the Constitution, the executive power of the State vests in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 154 further provides that notwithstanding that the Governor is the repository of all executive powers in the State, Parliament or Legislature of a State may by law confer any functions on any authority subordinate to the Governor. While there are a number of provisions in the Constitution both in Part Xi and Part xviii, which deals with the emergency provisions, which enable the Union Parliament and the Union Executive to assume legislative and executive powers which would normally vest in the corresponding legislative and executive authority within a State, there is no provision in the Constitution which may confer any extra-territorial power on any State or permit one State to exercise any power in relation to a territory which may comprise in another State. It is,

Therefore, beyond doubt that any executive action by or in a State of India could be exercised only in and with reference to the territory of that State. Wherever an executive action of a State is to be enforced in the territory of another State, it could be done only in accordance with the laws that may regulate such extra-territorial functioning. It follows, Therefore, that the State government can refer an industrial dispute only to such of the authorities which are constituted by it.

(11) The provisions of Section 10(1) of the Act lay down the conditions that must be satisfied before the appropriate Government can make a reference. Is there any thing in the provisions which may be indicative of the extent or limit of the power of the appropriate Government and in particular as to when would a State Government be an appropriate Government for the purpose of an industrial dispute.

(12) It appears to me that if a, State Government is empowered to make a reference only if it is of opinion that either an industrial dispute exists or such a dispute is apprehended, and such a reference can be made to one of the statutory bodies created by it, it follows a fortiori that it is either the existence of the industrial dispute within the territorial limits of a State or the existence of objective conditions on which such an apprehension could be based that determines the competence or, in that sense, the Jurisdiction of the State Government to make a reference. To my mind. Therefore, the proper question to ask in each case would be: does an industrial dispute exist within the limits of a State or not or if not, docs a situation exists with in such limits which could be a reasonable basis for an apprehension of an industrial dispute ? If the answer to either of the questions is in the affirmative the State Government concerned would have the necessary powers; if not, it would not.

(13) In considering the question as to whether an industrial dispute exists or apprehended it is necessary to examine the anatomy of an industrial dispute. A dispute is a difference between two or more persons. Ordinarily, it is a sequel to an action or inaction. According to Section 2(k) of the Act, "industrial dispute means any dispute or difference between employers and employers, 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". The first prerequisite is "a dispute or difference", which obviously implies an action or inaction prior to it. For instance, the management of a company may terminate the service of a workman. This constitutes a management action. The workman concerned challenges the validity of the action for a variety of reasons and demands reinstatement. The management concedes the demand and the workman is reinstated. The management having relented no dispute arises. The adverse action of the management may not be challenged by any one. No dispute arises. The management may, however, reject the demand, a dispute arises between the management on the one hand and the individual workman concerned on the other. As is well known, but for the provision of Section 2A of the Act such a

dispute would not be an "industrial dispute". It is only when such a dispute is taken up by a substantial body of workmen in the establishment that it gets galvanized into an industrial dispute. It follows that the action or inaction is not by itself the dispute nor does every dispute necessarily partake of the character of an industrial dispute. It is, however, the action or the inaction that leads to the dispute because if the action or inaction had not taken place or having taken place was rescinded there would be no occasion for the dispute. On the other hand, if the action or inaction having taken place was left at that and was not challenged the action or inaction exists and operates but does not lead to any dispute because none has been raised. Similarly, if the individual in the aforesaid instance raises the dispute and his claim is rejected, but, in a case where section 2A is not attracted, there is no espousal by the other workmen, as required, the dispute does not become an industrial dispute. Where, however, an action or inaction has taken place which may lead to a dispute but either the dispute has not been raised or having been raised, has not as yet matured in an industrial dispute, it could not be said that an industrial dispute "exists" but in such a situation the existence of the action or inaction or of the dispute may justify an interference that an industrial dispute is likely to be raised and, in that sense, be said to be apprehended. It would thus appear that an action or inaction, which forms the basis of the difference or dispute, the demand for its elimination, the rejection of the demand, if it is not a collective dispute an espousal of it are all distinct acts in themselves but are links which form an integral part of the chain that transforms an action or inaction into an industrial dispute. It would further appear that a basis for the apprehension of an industrial dispute is distinguishable from the existence of it and such a basis could perhaps be provided even though there may be neither espousal, nor a rejection and not even a demand, so long as there is some action or inaction which is likely to lead to an industrial dispute.

(14) Whether all or some of these steps are necessary to confer jurisdiction on the State Government, is the question that must then be answered. Is the situs of the action or inaction by itself sufficient to confer jurisdiction? Can a challenge to the action etc- or a demand or claim in relation to it, whether by the individual workman concerned or, in case of a collective dispute, by a body of persons by itself constitute a cause of action and confer jurisdiction on the Government? Since the existence or apprehension of an industrial dispute is a sine qua non for a reference is espousal, which sublimates the dispute into an industrial dispute, by itself capable of conferring such a jurisdiction. The action or inaction may take place at one place where the management operates. It may be communicated to the workman at another place where he may be actually working and, in that sense, would operate there. Does the situs of the place where action or inaction operates be capable of conferring jurisdiction.

(15) It appears to me that if the power of the appropriate Government to make a reference was confined to the existence of an industrial dispute then the action or inaction by itself would perhaps be incapable of conferring jurisdiction. This is

so because action etc., which may lead to an industrial dispute is still distinct from it. It may form a basis of a dispute but is not synonymous with it. It is not the dispute but the subject matter of it. The mere situs of the action or inaction by itself would not be determinative of the existence of an industrial dispute on its basis. A mere nexus between the industry and the State or between the action and the State by themselves would be insufficient to confer jurisdiction on the State Government concerned because the mere existence of the industry within the State or the location of the Head Office or the registered office of the company within the State may not be sufficient basis by itself for the conclusion that the industrial disputes exist. What confers jurisdiction in such a case is the existence of the dispute. The situs of the dispute alone is capable by itself to confer jurisdiction on the State within whose territorial limits the dispute exists. This is so because the place where the dispute has arisen obviously is the place where the dispute exists. The nexus between the State and the espousal of a dispute is also not relevant because even though the espousal, where it is necessary to galvanize a dispute into an industrial dispute, is a condition precedent for a reference, the process of espousal merely changes the nature of the dispute that existed before it but does not bring into existence a different or a new dispute.

(16) Where, however, an industrial dispute does not exist within the territorial limits of a State or has not come into being at all the State Government concerned would still have the jurisdiction to make a reference if it was of opinion that an industrial dispute was apprehended. In such a case a nexus between the apprehension of an industrial dispute and the State would confer jurisdiction. Since the apprehension of an industrial dispute must be based on some objective material, the existence of objective conditions within the limits of a State which could reasonably lead to an inference of an apprehension of the dispute would be sufficient to confer the necessary jurisdiction. Such a jurisdiction could be exercised in anticipation of the existence of an industrial dispute. It can, Therefore, be exercised even where such a dispute has yet to come into existence. Such a jurisdiction has a much wider sweep than the one which has reference to the existence of an industrial dispute. Conditions and factors which are not sufficient for the exercise of the other jurisdiction and are even irrelevant for that purpose, such as situs of action or inaction, demand, rejection and even espousal would be not only relevant but sufficient to confer such a jurisdiction.

(17) A consideration of the question as to the territorial limits of the State Government would be incomplete without a reference to the peculiar concept of an "establishment" in industrial law and the possible impact of the nexus between an establishment and a State on the power of the State Government. The expressions "establishment" and "industrial establishment" and "part of a, n establishment" have been used in different sections of the Act. Section 2(g) of the Act defines the expression "employer" in relation to the expression "industry". Section 2(j) defines the expression "industry" as meaning "any

business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen". The expression "establishment" does not occur in this definition. Section 2(s) defines the expression "workman" as a person "employed in any industry". Section 9B of the Act empowers the Government to exempt any class of "industrial establishments" or "class of workmen employed in any industrial establishment" by the operation of Section 9A of the Act, which provides for a notice of change. Section 10(1A), which empowers the Central Government to refer a matter to a National Tribunal, envisages that "industrial establishments situated in more than one State" may be likely to be "interested in, or affected by any industrial dispute. Sub-section (5) of Section 10 provides that where a dispute concerning "any establishment or establishments" has been referred, the appropriate Government may "include in that reference such establishment, group or class of establishments" of a similar nature which are likely to be interested in or affected by the subject matter of the reference. Section 18, which provides for persons on whom a settlement and an award are binding, inter alia, provides that an award shall be binding on all parties to the industrial dispute, all other parties summoned to appear in the proceedings as parties to the dispute, where a party is an employer, all "his heirs, successors or assigns in respect of the establishment to which the dispute relates" and where such a party is composed of workmen, "all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part". The provisions in Section 25A of the Act deal with the application of the provisions of Section 25C to 25E thereof to certain classes of industrial establishments". The Explanation to this Section provides that in this Section and in Section 25C, 25D and 25E "industrial establishment" means

(I) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 ; or

(II) a mine as defined in clause (j) of section 2 of the mines Act, 1952; or

(III) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

SECTION 25E provides that if a laid-off workman refuses to accept the alternative employment "in the same establishment", he would not be entitled to any compensation. Section 25FF which makes provision for compensation in case of transfer of undertakings, however, uses the expression "undertaking" rather than "establishment". Similarly, Section 25FFFA and 25FFF use the expression "undertaking". Section 25G which lays down the procedure for retrenchment, uses the expression "industrial establishment" and envisages a connection between the "workman" and "the establishment".

(18) Except for the purpose of Sections 25A, 25C, 25D, and 25E," the expressions "industrial establishment" or "establishment" have not been defined.

Ordinarily, the expression "establishment" connotes an organisation, an office or set-up and implies an element of location. It may be described as that which has been established in a place where some activity is carried on. Where an industry, an undertaking, calling or trade etc. is confined to an establishment, the determination of the meaning of the expression "establishment" does not present any difficulty for, in that case, the establishment is synonymous with the industry, undertaking, calling etc. As was pointed out by S. K. Das J., as he then was, and who spoke for the Court, in the case of *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, "where, however, the industrial undertaking has parts, branches, departments, units etc., with different locations, near or distant, the question arises what tests should be applied for determining what constitutes "one establishment". The learned Judge referred to the several tests "such as geographical proximity, unit of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity or purpose etc." and pointed out that "the real purpose of these tests is to find out the true relation between the parts, branches, units etc." and that if in true relationship they constituted one integrated whole, there would be one establishment, otherwise each unit would be a separate establishment. The learned Judge, however, pointed out to the difficulty in applying various tests and expressed the view that "the difficulty of applying these tests arises because of the complexities of modern industrial organisation: many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned" and that "it may be difficult to discover the real thread of unit" in certain cases. In the case of *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, Venkatarama Ayyar J., as he then was and who spoke for the Court expressed the view that "the conclusion would appear to be inescapable that each branch of a company should normally be regarded as a distinct industrial establishment".

(19) Having regard, Therefore, to the various provisions of the Act, the ordinary meaning of the expression "establishment" and the connotation of the term in industrial law an establishment may at times be synonymous with the industry or the entire undertaking but need not necessarily be so. In a unitary form of industrial or commercial organisation, all the constituent parts may, having regard to the unity of control, management and ownership, be regarded as one establishment. Where, however, an industry or an undertaking adopts a federal structure for its organisation, the various units, branches, which operate, by and large, as separate units would not be treated as the constituent units of one establishment but would be distinct establishments, though forming part of a larger whole. In this sense the concept of establishment in industrial law represents a clear departure from the ordinary law. In ordinary law neither the constituent units nor independent and separate units have any juristic personality or legal recognition independently of the natural or juristic person

which owns or runs the enterprise or the undertaking. In industrial law, the different units of an enterprises which could be considered as separate establishments, even though forming part of the larger whole, represent a national extension of the juristic personality which owns or runs them and are treated as such. To an extent Explanation Ii to Section 20 of the CPC is a recognition of the principle of notional extension.

(20) That being so, what is its impact on the power of the State Government to take seizure of an industrial dispute on account of, or in the absence of, a nexus between the "establishment" and the State. If Section 10 of the Industrial Disputes Act not only lays down the conditions for the exercise of the power but is also indicative of the territorial limits of such a power, then to my mind it is irrelevant if the activity being carried on by any employer within the limits of a particular State is an integral part of the larger establishment extended to outside the territory of the State or territories of more than one State or is a distinct establishment though forming part of the larger whole. This is so because Section 10 empowers the State Government to make a reference if an industrial dispute either exists or is apprehended. It has reference, Therefore, to the existence, either of an industrial dispute or of an apprehended dispute or the existence of objective conditions, which may justify such an inference, and the existence of an establishment or part of an establishment within the limits would not be very material. It would, however, have some significance if one were to apply the test of situs of the residence of the employer or to otherwise determine the situs of the action of the management which forms basis of the dispute. On an application of the test of situs of residence of the employer, the employer would be deemed to reside at the place where the establishment is located on the principle of notional extension of the juristic personality of the owner or the manager of the enterprise, both as known to industrial law as well as incorporated in Explanation Ii to Section 20 of the Code of Civil Procedure. In the same way, the action of the management of the establishment as distinct from the juristic person who owns it would be treated as the action of a legal entity.

(21) It would be appropriate to consider how far the provision of Section 20 of the CPC and the principles embodied in it throw any light on the question of delineation of the limits of the powers of the State Government. It has already been pointed out above that the principles laid down in the CPC with regard to the jurisdiction of Courts would strictly speaking be inapplicable in determining the limits of the powers of the State Government but may perhaps be of use as indicating broad and general guidelines. In ordinary law jurisdiction connotes the power that a Court or a Tribunal has to take cognizance of a cause and may have reference either to the parties or the subject-matter. It may lay down various limitations such as pecuniary and territorial. Section 9 of the CPC provides that Courts shall have jurisdiction to try "all suits of a civil nature" excepting those of which cognizance is either expressly or impliedly barred. Sections 15 to 20 deal with territorial limits of the Courts. In terms of Sections 16 to 18, broadly speaking, suits relating to immovable property have to be filed in Courts within

whose territorial jurisdiction the property is situated. The jurisdiction of Courts in respect of suits other than those referred to in Sections 16 to 18, as well as 19, which deals with suits for compensation for wrongs to person or movables, are regulated by the provisions of Section 20. As has been noticed above, Section 20 lays down a two-fold test (a) the situs of the residence or business of the defendant (b) situs of the "whole" or a "part" of the cause of action. In case there are more than one defendants, of whom only some are residents within jurisdiction, such a suit would need the leave of the Court in relation to defendant outside such jurisdiction. According to Explanation I to this Section, where a person has a permanent dwelling at one place and a temporary residence at another, he shall be deemed to reside at both the places in relation to a cause of action arising at the place where he was temporary residence. According to Explanation II "a Corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place". The expression "cause of action" has been judicially construed to mean all those facts which it is necessary for the plaintiff to prove in an action to obtain relief. The Section Therefore, casts a very wide net to attract the jurisdiction of the Court and a cause of action need not wholly or substantially arise in the local limits of the Court where the suit is filed and it is sufficient if it arises only in "part". The Section, does not, Therefore, incorporate any theory of "substantial cause of action". In the matter of parties, the residence of the defendant or of one of the defendants, if, there are many, is material but the residence of the plaintiff is irrelevant. This is apparently based on the theory that a creditor must follow his debtor. When it comes to a corporate body, which is ordinarily supposed to reside where its registered office is situated or where resides the brain behind it, its residence has been extended even to places where it has "a subordinate office" provided it has relation to the cause of action. If one were to apply the provisions of this Section or the principle incorporated in it in the determination of the limits of the power of the appropriate Government the result would be that, on the test of cause of action, the State Government would be competent to deal with a matter not only where the contract of service was entered into but also where the various steps, which transform an action or inaction into an industrial dispute, including the espousal took place. However, on the application of the other test, the situs of the place where the employer carries on business or works for gain or resides would determine the c

(22) Shri O. P. Malhotra, learned counsel for Gestetner, with his colossal background on the subject and Dr. Anand Parkash who appeared for the petitioner in the other case, with his! wide experience in industrial law sought to dissuade me from adopting a construction which may unnecessarily extend the scope of the power of the appropriate Government on the "ground that such a construction would be in conflict with the line legal thought on the question embodied in judicial precedents some of which are binding on this Court and all of which are entitled to respect. How have courts looked at the question, must

Therefore, be considered ?

(23) In *Lalbhai Tricumlal Mills Ltd. v. Vin (D.M.) and others*, 1956 (I) L.L.J. 557. Bombay High Court was concerned with a situation in which the workman concerned was employed by the company in its branch office in Bombay and the services of the workmen were terminated on the closure of the branch office. The workman approached the registered office of the company in Ahmedabad seeking reinstatement and eventually filed an application before the Labour Court at Bombay for reinstatement and compensation. A contention was raised by the company that the Labour Court at Bombay had no jurisdiction to try and dispose of the application because an application would not lie unless the employee or the representative union had in the prescribed manner approached the employer for relief, and the request had proved abortive and the approach having been made at Ahmedabad, where the registered office of the company was situated, and proved abortive, "the dispute arose in Ahmedabad and only the labour court at Ahmedabad can entertain this application". The High Court noticed that the proviso was merely procedural in nature and it merely obliged the employee to comply with its requirements before approaching the labour court but did not deal with the subject matter of the industrial dispute at all. The Court then proceeded to consider the well-known "test of jurisdiction" of a Court or Tribunal and held that what the Labour Court had to consider and decide would be "whether the employee was wrongly dismissed or discharged by the employer" and that being the subject-matter of the enquiry before the Labour Court, "that subject-matter arose in Bombay and not in Ahmedabad" and consequently, it was held that the Bombay Labour Court had the necessary jurisdiction. Chagla C.J., as he then was, and who spoke for the Court observed thus :

"But what we are concerned with to decide is : where did the dispute substantially arise ?

Now, Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the labour court. But applying the well-known tests of jurisdiction, a Court or tribunal would have jurisdiction if the parties reside within jurisd

These observations have since illuminated the course of legal thinking on the question that arose subsequently in a large number of cases as to the territorial limits of the power of the appropriate government even though it must be pointed out that strictly speaking there is no parallel between the jurisdiction of a Court or a Tribunal, a question with which that illustrious Judge was concerned and the question that arose in the other cases. The Bombay Act, with which the High Court was concerned did not contain any provision analogous to Section 10 of the Act. The simple question, if I may say with respect, before the Court was if Bombay Labour Court had the jurisdiction. The answer to the question would be in the affirmative if either of the tests envisaged by Section 20 of the Code were applied. The question if Ahmedabad Court would have jurisdiction did not arise and was not considered. What was pointed out was that merely because the

workman took a preliminary step of referring the matter to the employer at Ahmedabad did not divest the Bombay Labour Court of the jurisdiction. The theory of substantial cause of action, which was applied, represented a variation of the concept of cause of action as known to the Code.

(24) In *Lipton Limited and Another Vs. Their Employees*, , the Supreme Court was concerned with a contention that the Industrial Tribunal, Delhi had no jurisdiction to make an award in respect of employees of the Delhi office of the Company who were employed outside the then State of Delhi. The point of jurisdiction had been decided against the Company by the Tribunal and the Industrial Tribunal had pointed out that all the workmen of Delhi office, whether they worked in Delhi or not, received their salaries from the Delhi office and being thus under its control in the matter of leave, transfer, supervision, etc., the Delhi State Government was the appropriate" Government within the meaning of Section 2 of the Act to make the reference. The Appellate Tribunal upheld the decision of the Industrial Tribunal on this point. The question of jurisdiction was raised in the Supreme Court in the appeals but was apparently not seriously pressed. The Supreme Court, however, expressed the view that the Industrial Tribunal had the jurisdiction to adjudicate on the dispute between the company and its workman of the Delhi office.

(25) In *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, the company had its registered office in Calcutta and its factory at Jamshedpur and sales office in a large number of towns in the country including one at Ambala. On the close of the Ambala branch, the company terminated the services of its workmen at Ambala numbering 11. Six of these workmen sent a representation to the management claiming that all the branches of the company formed one unit and the retrenchment should have been done according to "all India seniority" and that the workmen had a legal right to get employment in other branches. A copy of the representation was sent to the Punjab Government which referred for adjudication to the Industrial Tribunal, Punjab, the question whether the retrenchment of the workmen concerned was justified and legal under the provisions of Section 25G of the Act. In the appeal against the award in the Supreme Court, it was contended on behalf of the management that the Punjab Government was not competent to make the order of reference, as on the closure of the branch at Ambala the management had no place of business in the State of Punjab. It was observed that the question as to the competence of the Punjab Government must "be decided on the principles governing the jurisdiction of courts to entertain actions or proceedings". Venkatarama Ayyar J. who spoke for the Court quoted with approval the observations of Chagla CJ. in the case of *Lalbhai Tricumlal Mills* (supra), which have been extracted above and expressed the view that these observations were made while the Bombay High Court was dealing "with a similar question under the provisions of the Bombay Industrial Relations Act. 1946" and held that "these principles are applicable for deciding which of the States has jurisdiction to make a reference under S. 10 of the Act". Applying the test laid down in the aforesaid case, it was observed that since the

appellant was not carrying on business anywhere in Punjab on the date of the reference "the Punjab Government would, Therefore, have jurisdiction to make the reference only if the cause of action had arisen wholly or in part within the State". It was then pointed out that if the validity of the closure was in issue, the cause of action had undoubtedly arisen within the territorial limits of the State and a reference on that question would have been competent. The contention whether the Punjab Government had jurisdiction to refer, the question of the "appropriate reliefs to be granted u/s 25G" as the retrenchment had taken place in Bombay was, however, left open in view of the finding that the Ambala branch was an industrial establishment.

(26) In *Ram Kishan Vs. Shambu Nath Vaid and Others*, , the workman had been transferred from Amritsar to Mussoorie. His services were eventually dispensed with on account of the disobedience of the transfer order. The dispute in regard to the termination of the services of the concerned workman was eventually taken up by his fellow workmen at Amritsar and the reference was made by the Punjab Government. It was contended on behalf of the employer that the reference of the dispute by the Punjab Government was not valid as the Punjab Government was not the appropriate Government. Negating the contention, it was held by a Division Bench of the Punjab High Court that the workman was working at Amritsar although he had been ordered to go to Mussoorie. He, however, never went to Mussoorie and the dispute having arisen within the territorial limit of Punjab Government, the Punjab Government was the appropriate Government.

(27) In the case of *Sharda Saran Srivastava (Cinema Employees' Union) and Another Vs. State of Uttar Pradesh and Others*, , the management transferred a permanent operator in its theatre at Kanpur to New Delhi. The transfer was objected to but in the course of conciliation proceedings the parties arrived at a settlement in terms of which the workman concerned was to resume work at Delhi but was to be retransferred to Kanpur after he had worked there for 60 days. The operator was, however, dismissed from service while working at New Delhi two days before the expiry of 60 days. The industrial dispute regarding the termination of his service was referred by the Uttar Pradesh Government to the Labour Court, Kanpur. The objection by the management that the reference was bad as the services of the petitioner were terminated at New Delhi and nowhere in U.P. was upheld by the Labour Court. The High Court quashed the award. Dwivedi J., as he then was, observed that the twin test of residence of parties and the situs of the dispute

"Propounded by Chagla C.J." had been "approved by the Supreme Court". It was, therefore, held that "if the subject matter of the dispute has substantially arisen within this State, then the State Government and the Labour Court, would have jurisdiction over it". It was held that "the subject matter of the dispute substantially arises at Kanpur within this State as the termination order at Delhi extinguishes the lien of petitioner No. 1 at Kanpur". It was observed that even

otherwise in as much as the workman was to go back to Kanpur after 60 days and "was like a bird of passage" in Delhi, the "workman at Delhi would have little interest" in his fate and that it was the workman at Kanpur, where he was to be permanently posted, who would be substantially interested" in the workman. It was further observed that "the impact of the termination order substantially falls at Kanpur and not at Delhi."

(28) In *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, , the workman concerned was working at the Bangalore branch of the company when he was transferred to Krishnagiri, within the then State of Madras, where the company had its Head Office. The workman challenged the right of the management to transfer him and was subsequently removed from service for disobeying the order of transfer. The cause of the workman was taken up by his fellow workman at Krishnagiri. The order of reference was made by the State of Mysore. The award, which declared the transfer as well as the dismissal unjustified, was quashed by the High Court on the ground that the validity of the order of dismissal had not been referred. On appeal by special leave, the Supreme Court was, inter alia, concerned with the question as to the competence of the Mysore Government to make the reference. Sikri J., as he then was. and who spoke for the Court answered the question thus :

" It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer. it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is : Where did the dispute arise? Ordinarily, if there is a separate establishment, and the workman is working in that establishment the dispute would arise at that place, the High Court observed, there would clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose ".

(29) In *Remington Rand of India Ltd. v. Delhi Administration & others*, 2nd (1971) 2 Del 723, a learned Single Judge of this Court was concerned with the question as to the territorial limits of the power of the Delhi Administration to make a reference of an industrial dispute which the management had with the workmen living outside such limits. The Tribunal had returned the finding that in view of the fact that the administrative control over the workmen in the entire region vested with the Delhi Regional Office, Delhi Administration had the necessary competence to make the reference. The award was upheld and it was pointed out that it was not a mere submission of the charter of demands by the workmen or the holding of the conciliation proceedings in a particular place that gave jurisdiction to the Government to make a reference and that what was material on the other hand "for giving such jurisdiction is the administrative

control concerning appointments and dismissals at a particular place". Reliance was placed on the decision of the Punjab High Court in *National Tobacco Co. Employees Union (Regd.) Jullundur v. Manohar Singh and another*, 1968 P & H 514. Support was also sought from the decision of the Supreme Court in *M/s. Lipton Ltd. v. Their Employees* (1959) Suppl. 2 Scr 150 and it was pointed out that in that case the "Supreme Court applied the well known test of jurisdiction, namely, that a court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction to cases arising under the industrial disputes also even though the Act did not deal with the cause of action and did not indicate what factors confer jurisdiction upon the Labour court". It was then pointed out that the observations of Chagla C.J. in *Lalbhai Tricumlal Mills Ltd. (supra)* (2) "were also approved in *Indian Cable Co.*" (supra) (3). It was further pointed out that a demand by the workmen working outside Delhi had been made on their behalf at Delhi and that. Therefore, the cause of action would be deemed to have arisen in Delhi so as to clothe the Delhi Administration with the necessary competence to make a reference and the Tribunal at Delhi with the necessary jurisdiction to take cognizance of it.

(30) In *S. N, Sunderson and Co., New Delhi v. Presiding Officer, Labour Court No. 1, Jabalpur and another*, 1973 Lab & I C 991, the firm had its Head Office in Delhi and a factory in Katni in the State of Madhya Pradesh. An industrial dispute with regard to the removal of the employee from the factory was referred for adjudication by the Madhya Pradesh State Government. A Division Bench of the Madhya Pradesh High Court held, negating the contention of the management, that the Delhi Administration would not be competent to make a reference and the reference by the Madhya Pradesh Government was valid. The High Court pointed out that in such cases it was not possible to "apply the analogy of the CPC in its entirety" and that "it was always to be ascertained as to where the dispute arises". The observations of the Supreme Court in the case of *Indian Cable Company (supra)* and of *Ranga Vila Motors (supra)* referred to above, and the observations of Chagla C.J. extracted above, were relied upon. It was pointed out that the dispute arose at Katni in Madhya Pradesh and no part of the dispute could be said to have arisen at Delhi where the head office of the firm was located. An earlier decision of that Court in *Association of Medical Representatives (M & V) v. Industrial Tribunal, M.P., Indore and others*, 1967 M.P. 114, in which the reference by the State Government was justified on the ground of location of the Head Office of the Company with the State was distinguished because the workman involved was a roving medical representative.

(31) In *Messrs Spencer & Co. Ltd. (supra)* (5) the company had its Head Office in the State of Tamil Nadu. The workman concerned was working in the company's branch at Jaipur, where he was charged for misconduct and where also an enquiry into the charges was held and pursuant to it he was dismissed from service. Spencer's Employees Union, Model Town, Delhi took up the matter and sought the reinstatement of the workman and on the failure of the conciliation

proceedings, the Delhi Administration made the reference. The management challenged the jurisdiction of the Additional Labour Court and the competence of the Delhi Administration to make reference but the contention was repelled by the Additional Labour Court. A learned Single Judge of this Court quashed the Award holding, following the decisions of the Supreme Courts in the cases of Indian Cable Company and Kanga Vilas Motors (supra) that the State of Rajasthan was the appropriate Government. The learned Judge further observed that "the test for making a reference of the dispute will depend on whether a suit concerning that dispute could be filed" at a particular place or not "assuming that such a dispute is capable of being the subject matter of a suit" and that such a suit could have been filed either in Madras or in Jaipur but not in Delhi. The learned Judge envisaged the possibility that "there may be more than one appropriate Government in a given case."

(32) In the recent case of Hindustan Aeronautics Limited v. Their workmen and others, 47 F.J.R. 478, the Supreme Court was concerned with a situation in which the branch of company was situated in one State but was under the control of a divisional office situated in another, the branch being a separate unit and its workmen received their packages at the branch and were under the control of the officers of the company stationed at the branch itself. It was held that if there was any disturbance of industrial peace in the branch, the appropriate Government concerned with the maintenance of industrial peace was the Government of the State where the branch was situated. The decision in the case of Lipton Limited (supra) was distinguished. This is how the question was answered :

" The other leg of the argument to challenge the competency of the West Bengal Government to make the reference is also fruitless. It may be assumed that the Barrackpore branch was under the control of the Bangalore division of the company. Yet it was a separate branch engaged in an industry of repairs of aircrafts or the like at Barrackpore. For the purposes of the Act and on the facts of this case the Barrackpore branch was an industry carried on by the company as a separate unit. The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate Government concerned in the maintenance of the industrial peace was the West Bengal Government. The grievance of the workmen of Barrackpore were their own and the cause of action in relation to the industrial dispute in question arose there. The reference Therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid. The facts of the case of Lipton Limited and Another Vs. Their Employees, ; cited on behalf of the appellant are clearly distinguishable. The ratio of that case was pressed into service in vain on behalf of the appellant."

(33) A review of cases from Lalbhai Tricumlal Mills Ltd. (supra) to Hindustan

Aeronautics (supra) reveal on the one hand, a diversity of tests and of conclusions but, on the other, a unity of legal thought, not to unnecessarily restrict the scope and ambit of the power of the state Government to act as an appropriate Government in relation to industrial disputes. It is true that the decisions do not conform to a uniform pattern but it is nevertheless possible to see a consistent undercurrent of legal thought inspired by the principles of jurisdiction of courts conceived in an understandable judicial anxiety to ensure that all pockets of industrial disturbance can be effectively identified and suitably dealt with. Another significant feature of the decisions is, as is common to judicial pronouncements, that they decide the point necessary for the decision of the case leaving the rest open. These decisions have, therefore, dealt with the question if the referring authority concerned had the necessary competence without in any way including or excluding the other authority as the possible alternative authority. Thus in *Lalbhai Tricumlal Mills Ltd.* (supra) the question whether the Bombay Labour Court was competent was answered in the affirmative because that is where the employee was working and where his services were terminated on an obvious application of the test of cause of action even while laying down that it was not only the situs of cause of action but of the parties as well which would determine the competence although leaving open the question, if the Ahmedabad Labour Court would have also been competent or not. In *Lipton Limited* (supra) the question of jurisdiction was not seriously pressed in the Supreme Court but was answered in the affirmative impliedly on the basis on which the Tribunal had overruled the objection to the jurisdiction which turned on the residence of the company as well as the location of its controlling office. The test of cause of action was not even considered. In *Indian Cable Co.* (supra) (3) the principles governing the jurisdiction of Courts to entertain actions or proceedings were clearly held applicable and both the tests of cause of action and of residence were considered to have been and were given a further imprimatur of the Supreme Court. Since the test of residence was not satisfied, it was pointed out that the Punjab Government would have jurisdiction "only if the cause of action had arisen wholly or in part within the State". In the matter of cause of action also, the principle enunciated by Chagla C.J. was amplified in that Chagla C.J. had advocated the concept of "substantial" cause of action rather than of any "part" of it. The question of competence was, however, left open. In *Ram Kishan* (supra) (6) the Punjab Government was competent irrespective of the test was to be applied because nothing happened in Mussoorie. In the case of *Sharda Saran Srivastava* (supra) (7) the management was carrying on business primarily within the State of U.P. but also in Delhi. The dispute having been raised within the State of U.P. could be referred by U.P. Government both on the application of the test of residence as also of the cause of action. While it is doubtful if the concept of "lien" on a post could be applied to any service other than the service under the State, and I say so with respect, there was no doubt that the initial employment was there. In that sense the order of termination would operate on the situs of the employment irrespective of whether the workman may be working on transfer. In *Sri Ranga Vilas Motors*

(supra(4) reference by the Mysore Government was held. valid because Bangalore office was a separate establishment where the workman was working and where the order was to operate on him. The test of residence, however as propounded by Chagla C.J., and approved in Indian Cable Co. (supra), (3) was not excluded and could be said to have been affirmed. The observation that there should be nexus between the dispute and the territory of the State "and not necessarily between the territory of the State and the industry concerning which the dispute arose", was not intended to exclude the jurisdiction where there was a mere nexus between the territory of the State and the industry. What was pointed out was that the nexus between the dispute and the territory of the State was sufficient and that in such a case the further nexus between the territory of the State and the industry was not required to confer jurisdiction on the State Government in whose territory the dispute had arisen. The contention that the espousal in the other State divested the State of Mysore to make the reference was turned down but it was not held that the situs of espousal could not, itself or coupled with other factors, confer jurisdiction. In Ramington Rand of India Ltd. (supra) the decisions of the Supreme Court were clearly read as approving the twin test propounded, by Chagla C..T. The reference by the Delhi Administration was Primarily justified because even though the situs of their employment was outside Delhi, a demand by the workmen working outside Delhi was made on their behalf at Delhi and the making of such a demand was considered as satisfying the test of cause of action. In S. N. Sunderson & Co. (supra) (13) a slightly dissenting note was struck by the Madhya Pradesh High Court when it laid down that the analogy of the Code could not be applied "in its entirety" and the test by implication confined to one of cause of action. This decision, to my mind, ignores the fact that the Supreme Court has not only clearly approved the twin test propounded by Chagla C.J., but had amplified the test of cause of action, and I say so with respect. The validity of the order of reference by the Madhya Pradesh Government was, with respect, rightly upheld on an application of the test of cause of action but the jurisdiction of the Delhi Administration could not have been excluded in view of the location of the head office, and I say so with respect. In spencer (supra) (5) the reference by the Delhi Administration was quashed because Delhi was. neither the situs of the Head Office of the company nor any cause of action had arisen in Delhi and the reference, Therefore could not be justified on any of the two tests. In Hindustan Aeronautics (supra) (13) the reference by the west Bengal Government was justified because that was the situs of an independent establishment. was the place where the workman was working, and the situs of the cause of action arising out of the termination. The competence of the State Government within whose territory the Head Office of the company was situated was neither considered nor excluded. It was also pointed out that any disturbance of ""industrial peace" at a place where "a considerable number of workmen were working" would confer jurisdiction on the State Government as "the appropriate Government concerned in the maintenance of the industrial peace", an implied invocation of the requirement of Section 10 of the Act to delineate the territorial

limit of the State Government. I may be useful to notice certain common features of these decisions. In the first instance, none of the decisions, except the last one, expressly or impliedly, invoke the requirements of Section 10 of the Act as a possible source of guidance to determine the territorial limits of the State Government. In *Hindustan Aeronautics* (supra) there is an implied invocation. The decisions, however, do not exclude the Section as a possible source of guidance. In the second place. Courts have, by and large been guided by the general principles of jurisdiction of Courts laid down in the CPC although there is no unanimity as to the extent of the application of the two-fold test laid down in the Code. In the third place, and this to my mind is very significant, the question as to the extent of the power of the Government is considered only in the context of a reference to adjudication of existing industrial disputes. The impact, if any, of the power of the appropriate Government to refer even a non-existent but an apprehended dispute on the ambit and scope of the territorial limit of the power did not fall for consideration.

(34) It thus appears that two distinct approaches to the question are possible. One of these is based on the general principles of jurisdiction of Court as known to the Code of Civil Procedure. The other is based on the statutory conditions for a reference as laid down in Section 10 of the Act. The first approach clearly envisages a two-fold test, that is, one of situs of the cause of action and the situs of the residence of the parties. The other approach also envisages the two-fold test viz. situs of the existence of a dispute and of the objective conditions which would justify an inference of the existence of an apprehended dispute. It is also clear that while there are obvious practical difficulties if either of the two tests of situs of the cause of action and of the residence of the parties is applied with the rigidity with which they are applied under the Code, the broad principles incorporated in Section 20 of the CPC would, nevertheless, provide a good guide to regulate the delineation of the territorial limits of the powers of the State Government. A comparative study of the two approaches further reveals that they are not mutually contradictory and, quite interestingly, the impact of both on the territorial limits of the power of the State Government is, by and large, co-extensive. Thus, if a reference by a State Government would be justified on the application of the first approach, if the contract of employment was entered into or terminated within the territory of the State of the establishment in which the worker is employed is situated within such territory or the dispute or the difference arose within such territory or having arisen outside, was taken up with the employer within such territory by or on behalf of the worker or if the matter was raised with the State Government within whose jurisdiction the employer was carrying on business, either actually or notionally on an application of the Explanation to section 20 of the Code, the State Govt. would nevertheless, have jurisdiction even if one were to be guided by the other approach as to the situs of the dispute or of the objective conditions which may justify the inference of the existence of an apprehended dispute. Both the approaches, to my mind, cast a very wide net to attract the jurisdiction of the appropriate Government and are.

Therefore, consistent with the broad policy embodied in the Act.

(35) That brings me to the question if the references by the Delhi Administration in the two cases before me were valid. The answer to these questions, in my view, would be in the affirmative irrespective of the approach, of the tests visualised by the two approaches, that may be applied to the facts and circumstances.

(36) In the case of Associated Traders & Engineers Pvt. Ltd. the Head Office of the Company is in Delhi in whose overall control and supervision the branches function. All appointments and termination orders are issued from the Head Office. The salary bills are sent to the Head Office where after the payment is made at the branches. The company prepares one consolidated balance sheet and the bonus is paid on the basis of the profit and loss account of the company as a whole. The demands of the Kanpur employees were incorporated charter of demands which was submitted to the management of the Company at its Head Office, for its consideration. It is in Delhi where the Head Office turned down the demands. The Delhi Private Motor Transport Workers' Union, a Delhi based trade union in the industry made a demand on behalf of the employees of the company who were working in Kanpur. When the demands were turned down, a dispute arose and being an industrial dispute it was referred to the Tribunal by the Delhi Administration. The Delhi Administration was, Therefore, competent to make a reference whichever way one looked at the facts and circumstances. The test of cause of action was satisfied because the demands were made on behalf of the employees to the management in Delhi and that is where the demands were turned down. The test of residence was satisfied because the Kanpur employees approached the Delhi Administration and Delhi happened to be the place of residence of the company. The situs of the existence of the dispute as also of the objective conditions from which an inference of an apprehended dispute could be drawn also coincided. There was considerable controversy on the question if the Kanpur office was a separate establishment. The Tribunal has answered the question in the negative holding that it was an integral part of an all India organisation on the test of unity of management and control. Some of the features of the organisation referred to above do lend considerable support to the conclusion. However, the decision of this question is unnecessary. The real question is if the Delhi Administration has the necessary jurisdiction. The answer to this question depends on various factors referred to above. If the answer of this question is in the affirmative on account of the various factors that confer such a jurisdiction it is irrelevant if Kanpur office was a separate establishment. It would have significance if the validity of the reference by the U.P. Government fell for consideration. It has no impact on the question as to the competence of the Delhi Administration. One does not necessarily exclude the other.

(37) In the case of Gestener Duplicators Pvt. Ltd. the employment of the workman was in Delhi where the company has its administrative Head Office which at the material time was called its Regional Office. Even when there was

transfer from Delhi, the situs of his employment did not cease to be in Delhi because that is where the contract of service was entered into. The workman challenged the final order in a representation submitted to the general manager of the company at New Delhi seeking reinstatement in the Delhi regional office where he had been initially appointed. The cause of the workman was taken up by his co-workers in the Delhi office through a Delhi based union. Part of the cause of action, Therefore, clearly arose in Delhi where the contract of service was entered into and which is the place where he was bound to discharge his duties. Even though the order was made outside Delhi, it also operated at the place of his initial employment. In any event, he raised a dispute, in Delhi where also it was taken up and raised by the employees of the company through a Delhi based union. Delhi was also, Therefore, the venue of the dispute as also the place where the objective conditions obtained which would have justified an inference of the existence of an apprehended dispute. It is true that the place where the order was in fact made, and where the workman was actually working at the material time and which was a separate establishment was outside the territorial limits of the Union Territory of Delhi. It is equally true that on an application of one of the known tests the appropriate Government exercising jurisdiction in that territory would have had the necessary competence to take seizen of the matter, if it was raised, but, in my view, that has no impact on the jurisdiction of the Delhi Administration so long as the conditions that attract the jurisdiction are satisfied. The power of the two authorities are not mutually exclusive. Delhi Administration was, Therefore, competent to make a reference.

(38) It follows, Therefore, that the Tribunal and Labour Court concerned had the necessary jurisdiction. The jurisdiction of these is primarily dependent on the validity of their appointment. Once they are validity appointed, and that is not in doubt, a valid order of reference confers on them the jurisdiction to deal with the subject matter of the reference. If the orders of reference are valid there is no other limitation on their jurisdiction except those envisaged by the Act such as the limit of the operation of the award.

(39) That leaves for consideration the two additional points raised on behalf of the petitioner in the case of Associated Traders & Engineers Pvt. Ltd. It was contended that the Delhi Private Motor Transport Workers Union, a Delhi based union in the industry, had no locus standi to raise the dispute on behalf of the Kanpur employees and that in view of the pendency of the conciliation proceedings in Kanpur in respect of the disputes forming subject matter of the inference, the reference was incompetent. Both the contentions appear to me to be devoid of any substance. It was not a case of an individual dispute for which espousal was necessary to convert it into a referable dispute. It was a collective dispute. The aid of a substantial body of workmen directly or through their union was, Therefore, unnecessary. That being so, the Kanpur employees, as indeed the Delhi employees of the company, were free to raise the dispute. The medium through which they raised it was wholly immaterial. Any person or institution, which is legally competent, can represent another unless the

representation is regulated by law in which case the mode of representation must conform to the legal requirements. Section 36 of the Act which the learned counsel had in mind when raising the question of locus standi provides for representation of parties "in any proceeding under the Act". Sponsoring a representation to the management of a company or making a representation on behalf of the employees to a company could not be said to be a proceeding under the Act even though the conciliation proceedings would perhaps be within the scope of the expression "proceeding". The proceedings in the Tribunal are no doubt such proceedings. In any event, a charter of demands presented to the management through the union or by the union on behalf of the employees would not cease to be a representation or a demand merely because a union was not competent to represent the employees. In any event disability of a person or institution, who is not competent to represent, does not change the nature of the written representation that may have been made by such a person or institution, unless procedure prescribed the mode of representation. There was no such mode prescribed in the present case. The pendency of conciliation proceedings in Kanpur, to my mind, had no impact on the competence of the Delhi Administration. The competence of the Delhi Administration had relation to the power and the obligation of the Delhi Administration as an appropriate Government under the provisions of Section 10 of the Act and would not be affected by the pendency of any proceedings elsewhere or the possibility that any other authority may be dealing with the matter. It was at best a circumstance to be considered by the appropriate Government at the time of making the reference. Even if the conciliation proceedings in Kanpur ultimately matured into a parallel reference by the appropriate Government in the State of Uttar Pradesh, the parties, being common to the proceedings, could have obtained suitable directions from one of the two industrial Tribunals who may be called upon to deal with the matter.

(40) In the result, the petitions fail and are hereby dismissed with costs. Counsel's fee in each of the petition is assessed at Rs. 750.

(41) As the proceedings on the merits of reference remained suspended during the pendency of these petitions it would be reasonable and proper that they are concluded with the maximum possible expedition.