

(2010) 06 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 1610 of 2009

Bharat Forge Limited

APPELLANT

Vs

Maharashtra General Kamgar, R.R. Hendre, Assistant
Commissioner of Labour and D.P. Pagar Additional
Commissioner of Labour

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(2), 12, 12(5)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 20(2), 21(1), 3, 3(13)

Citation : (2010) 126 FLR 1031 : (2011) 2 LLJ 724

Hon'ble Judges : Ranjana Desai, J;A.A. Sayed, J

Bench : Division Bench

Advocate : P.J. Rele, for the Appellant; N.M. Ganguli, for the Respondent

Judgement

A.A. Sayed, J.—Rule. By consent, rule made returnable forthwith and heard finally.

2. The principal question which falls for consideration in this petition is whether a reference can be made by the appropriate Government at the instance of an unrecognized Union u/s 10(1) of the Industrial Disputes Act, 1947 ("I. D. Act" for short).

3. The Petitioner is a company incorporated under the Companies Act, 1956, having one of its factories at Mundhwa, Pune. It is engaged in the activity of manufacture of forgings and employs about 800 permanent workmen on its rolls in the said factory. The said workmen are stated to be members of Bharat Forge Sangh, which is the union duly recognized in respect of the petitioner company's aforesaid factory (hereinafter referred to as "the recognized union"), under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act). Respondent No. 1

Maharashtra General Kamgar Mahasangh is a Trade Union which is an unrecognized union (hereinafter referred as Respondent No. 1 union) which represents contract labour workmen, who are engaged in petitioner undertaking through various contractors under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Contract Labour Act"). Respondent No. 2 is the Assistant Commissioner of Labour and Conciliation Officer who issued the impugned failure report dated 7th October, 2008 (Ex. "M" to the petition). Respondent No. 3 is the Additional Commissioner of Labour, who passed the impugned order of reference dated 25th November, 2008 (Ex. "O" to the petition).

4. It is the case of the petitioner company that formerly, the contract labour workmen had organized themselves under the banner of Maharashtra Labour Union and thereafter under the banner of Sarva Shramik Sanghathana. The said Sarva Shramik Sanghathana had raised a demand that the contract labour system established by the petitioner company should be abolished. In light of the aforesaid demand, the matter was referred to the Advisory Committee of the State Government under the Contract Labour Act. The said Advisory Committee studied the contract labour system prevailing in the petitioner company and made recommendation to the State Government that the contract labour system followed by the petitioner undertaking ought not to be abolished. Upon receipt of the aforesaid recommendation, the State Government concurred with the same and issued a Notification dated 24th August, 2004 (Exhibit "C" to the petition) not to abolish the contract labour system prevailing in the petitioner company. The contract labour workmen, thereafter, joined the membership of respondent No. 1 union. On 22nd April, 2008, respondent No. 1 union informed the petitioner company that some of the workmen engaged through the contractors had joined their membership and the petitioner company was called upon to accord respondent No. 1 union recognition on behalf of the said workmen. Respondent No. 1 union thereafter, by their letter dated 29th April, 2008 called upon the Dy. Commissioner of Labour to refuse permission to the petitioner company for engaging contract labour in its factory and alleged violation of the provisions of the Contract Labour Act. Respondent No. 1 union claimed not only that there was contravention of the Contract Labour Act but also that the contracts were sham and bogus. By their letter dated 16th June, 2008 respondent No. 1 union recorded that about 650 contract workmen had become members of their union and called upon the Dy. Commissioner of Labour to intervene in the matter and refer the matter for adjudication in case no settlement is reached in conciliation between the petitioner company and respondent No. 1 union under Sections 10 and 12 of the I. D. Act. Simultaneously, respondent No. 1 union also addressed another letter dated 16th June, 2008 to the petitioner company demanding that the contract labour workmen which were employed through 144 contractors be treated at par with regular employees of the petitioner company with retrospective effect and they be extended with same benefits, allowances, wages, etc. and to terminate the

existing contract system and the contract allotted to about 144 contractors, as the contracts were sham and bogus and were entered into only with a view to deprive the concerned workmen of their legal and legitimate dues. The petitioner company replied to the letter stating that respondent No. 1 union was not the recognized union and that the recognized union was Bharat Forge Kamgar Sangh and therefore being a nonrecognized union, respondent No. 1 union was not entitled to raise a dispute against petitioner company. It was also pointed out that u/s 36 of the I. D. Act the right of representation of the workmen lay exclusively with the recognized union. It was further stated that the petitioner company had obtained registration certificate as the principal employer under the Contract Labour Act and the contractors, who had engaged more than 20 workers, had also obtained licenses under the said Act. It was pointed out that the Government by its notification dated 24th August, 2004 had decided that there was no case made out for abolition of the contract labour system prevailing in the petitioner company. It was further stated that there was no relationship of employer and employee and there was no industrial dispute as defined in Section 2(k) of the I. D. Act and therefore the demand made by respondent No. 1 union was unsustainable. In their letter dated 1 1th August, 2008 (Ex. "J" to the petition) the respondent No. 1 union has interalia stated that the demand of the Union is not that contract system in the Company should be abolished which the State Government has allegedly held in favour of the system; the demand is that the workmen employed in various jobs in the undertaking of the Company should be absorbed and regularized in the services of the Company.

5. There is also a letter on record dated 17th September, 2008 by the recognized union Bharat Forge Kamgar Sangh, to the Assistant Commissioner of Labour, wherein they have pointed out that their union is the registered and recognized union under the MRTU & PULP Act; hence as per Section 36 of the I. D. Act only they have the legal right to represent and sign a settlement with the management of the petitioner company and that they are sole bargaining agent and requested the Assistant Commissioner not to entertain any dispute in conciliation without their knowledge. There are further communications referred to by the petitioner in the petition.

6. By the impugned letter dated 7th October, 2008 (Exhibit "M" to the petition), the Conciliation Officer has recorded that the demand of respondent No. 1 union representing the cause of the contract labour workmen were admitted and discussed. However, no amicable settlement could be reached. He, accordingly, submitted the failure report to the Government. By the impugned order dated 25th November, 2008 (Exhibit "O" to the petition), the Additional Commissioner of Labour, Pune, after considering the Failure Report submitted to him, came to a prima facie conclusion that the existing dispute could be referred to the Industrial Tribunal for adjudication and accordingly referred the matter for adjudication to the Industrial Tribunal by setting out the following point for reference in the form of Agenda as set out hereinbelow:

AGENDA

The present employees employed through so called 144 contractors be absorbed as regular employees of the Company, extend them all the benefits, allowances, wages, etc. at par with regular employees of the company with retrospective effect, terminate the existing contract system and contract allotted to about 144 contractors with immediate effect.

7. A reply has been filed by respondent No. 1 union opposing the petition. According to the respondent No. 1 union, the petitioner company has employed approximately 800 permanent workmen and that besides 800 workmen there are over 2000 workmen who are paid much less than their counterpart in the petitioner company, who are employed through alleged contractors and that the contracts were sham and bogus. It is stated that the workers are employed in the main manufacturing stream of the petitioner company. There are questions of facts and also law which are seriously contested between the parties and need to be gone into, which only the Industrial Tribunal can determine and not the Appropriate Government, which is only exercising its administrative function. According to respondent No. 1 union, at least 60 of the 144 contractors are fictitious and non-existent. It is further stated that it will be premature at this stage to decide one way or the other if the reference as made, is bad in law or not maintainable in law and that every court or tribunal has inherent jurisdiction to decide whether it has jurisdiction to decide the matter before it.

8. It must, at the outset, be stated that though several contentions have been raised in the petition, the thrust of the argument that has been canvassed before us, as is reflected in the written submissions on behalf of the petitioner company, is with regard to issue of locus of respondent No. 1 union to seek a reference and the maintainability of such reference at their instance.

9. Learned Senior Counsel Mr. Rele, on behalf of the petitioner company, submitted that an industrial dispute u/s 2(k) of the I. D. Act is required to be espoused by union of workmen employed in the establishment or by an appreciable number of workmen employed in the establishment. He placed reliance upon the case of The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another, , and pointed out the observations of the Apex Court that in order to become an industrial dispute, it had to be established that it has been taken up by the union of employees of the respondent Company therein or by an appreciable number of employees. He submitted that because of the law laid down by the Apex Court, Section 2A was introduced in the I. D. Act enabling individual workman to raise a dispute arising as a result of discharge, dismissal, retrenchment, termination or suspension. Learned Senior Counsel, Mr. Rele then relied upon decision of the Apex Court in the case of Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha 1995 I CLR 967. He referred to para 50(iii) of the said judgment wherein it is observed that if the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption, however, the dispute will

have to be raised invariably by the direct employees of the principal employer.

10. Learned Senior Counsel Mr. Rele then referred to Section 36(1) of the I. D. Act, the proviso of which lays down that where there is a recognized union for any undertaking, no workman in such undertaking shall be entitled to be represented in any such proceeding not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration, except by such recognized union. He contended that since the recognized union in the petitioner company was Bharat Forge Kamgar Sangh, that union alone has exclusive right to represent workmen in an industrial dispute under the Act. Thus, in the submission of the Learned Senior Counsel, the respondent No. 1 union which is an unrecognized union, had no locus to raise any demand and respondent Nos. 2 and 3 ought not to have entertained the demand and made a reference. The Learned Senior Counsel, therefore, urged that the impugned order of reference is required to be set aside. Mr. Rele also placed reliance on the following decisions of the Hon'ble Supreme Court (1) *Rashtriya Chemical and Fertilizers Ltd. and Another Vs. General Employees Association and Others*, ; (2) *Steel Authority of India Limited v. Union of India and Ors.* (2006) 12 SCC 233; (3) *Nedungadi Bank Ltd. v. K. P. Madhavankutty and Ors.* 2000 I CLR 671 and (4) *National Engineering Industries Ltd. v. State of Rajasthan and Ors.* 2000 I CLR 389.

11. Mr. Ganguli, Learned Counsel on behalf of the respondent No. 1 union, on the other hand also relied upon the very case of *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha* (supra). He alluded to para 50(ii) of the decision wherein it was observed as under:

53. Our conclusions and answers to the questions raised are, therefore, as follows:

(i) ...

(ii) If the contract is a sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is a sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is a sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour u/s 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming

to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government u/s 10 of the Act.

12. Learned Counsel, Mr. Ganguli also placed reliance on the decision of the Apex Court in the case of International Airport Authority of India v. International Air Cargo Workers Union 2009 AIR SCW 4926, wherein in paragraphs 19 and 20 it is observed by the Apex Court as under:

19. A course correction, if we may use that expression, was applied by the Constitution Bench, in SAIL. This Court made it clear that neither Section 10 nor any other provision in CLRA Act provides for automatic absorption of contract labour on issuing a notification by the appropriate government u/s 10(1) of the CLRA Act and consequently the principal employer cannot be required to absorb the contract labour working in the establishment. This Court further held that on a prohibition notification being issued u/s 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham or nominal and merely a camouflage, then the so called contract labour will have to be treated as direct employees of the principal employer and the industrial adjudicator should direct the principal employer to regularize their services in the establishment subject to such conditions as it may specify for that purpose. On the other hand if the contract is found to be genuine and at the same time there is a prohibition notification u/s 10(1) of CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age. As noticed above, SAIL did not specifically deal with the legal position as to when a dispute is brought before the Industrial Adjudicator as to whether the contract labour agreement is sham, nominal and merely a camouflage, when there is no prohibition notification u/s 10(1) of CLRA Act.

20. But where there is no abolition of contract labour u/s 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act the principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of

their dispute that they are the direct employees of the principal employer and the agreement is sham, nominal and merely a camouflage, even when there is no order u/s 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification u/s 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.

13. Mr. Ganguli, learned Counsel for the respondent No. 1 union, contended that for the espousal of the cause of the workmen of the so called contractors, the direct workman of the establishment or the recognized union is not necessary and the workmen can themselves do so through their union. Mr. Ganguli submitted that the contract labour workmen cannot go unrepresented and unheard in absence of support from respondent No. 1 union. He called in question the vires of Section 36(1) to the I. D. Act which gives exclusive right to recognized union to represent workmen in an Industrial Dispute on the ground that it is violative of the fundamental rights of the workmen under Article 19(1) (c) of the Constitution of India. He pointed out that even in the case of *Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others*, , the constitutional validity of Section 20(2)(b) of the MRTU & PULP Act which inter alia seeks to amend Section 36(1) of the I. D. Act was kept open. The

Learned Counsel further submitted that even under the MRTU & PULP Act, the right exclusive of the recognized union to espouse the cause of the workmen is limited to Items 2 and 6 of Schedule IV of the said Act as held by the Division Bench of this Court in the case of Warden & Co. (India) Ltd. v. Akhil Maharashtra Kamgar Union 2001 II CLR 359 and Ceat Ltd. (Electronics Division), Mumbai v. Anand Aba Saheb Hawaldar 2003 II CLR 741. Mr. Ganguli also cited the following rulings (1) Oswal_Petrochemicals v. Govt. of Maharashtra and Ors. (2005) 12 SCC 433; (3) V. Veerarajan and others Vs. Government of Tamil Nadu and others, and (4) Shambu Nath Goyal Vs. Bank of Baroda, . He, therefore, submitted that the order of reference was rightly made and no interference is called for by this Court.

14. We have heard Learned Senior Counsel Mr. Rele and Learned Counsel Mr. Ganguli.

15. In the instant case, the charter of demand that has been raised by respondent No. 1 union is reflected in their letter dated 16th June, 2008. The demand set out in the said letter reads as follows:

DEMAND

The present employees employed through so called 144 contractors be absorbed as regular employees of the company, extend them all the benefits, allowances, wages, etc. at par with regular employees of the company with retrospective effect, terminate the existing contract system and contracts allotted to about 144 contractors with immediate effect since the same are sham and bogus and created only with a view to deprive the concerned workers of their legal and legitimate dues the work is of a permanent nature and directly related to the manufacturing activities of the factory.

16. Respondent No. 1 Union has in their further letter dated 11th August, 2008 stated as follows " the demand of the Union is not that the contract system in the company should be abolished, which the State Government has allegedly held in favour of the system. The demand is that the workmen employed in the various job in the undertaking of the company should be absorbed and regularized in the services of the company The company may continue with the contract system, if they so desire "

17. After holding conciliation proceeding, the Conciliation Officer has submitted a failure report dated 7102010. The conciliation officer has stated in his report that on verification of the papers submitted by the respondent No. 1 union, it is found that they have sufficient membership to raise the dispute. Upon consideration of the failure report, the impugned order of reference came to be passed by the appropriate Government. The petitioner company in this petition have essentially prayed that the order of reference be set aside.

18. It needs to be noted that the concept of recognized union was introduced for the first time in the I.D. Act by the amendment to the I.D. Act vide the MRTU &

PULP Act (Maharashtra Act 1 of 1972) insofar as its application in the State of Maharashtra is concerned. Section 3 of MRTU & PULP Act sets out definitions. "Recognized union" under subsection (13) of Section 3 means a union which has been issued a certificate of recognition under Chapter III of the said Act. Chapter III of MRTU & PULP Act deals with the obligation and rights of recognized union, other unions and certain employees. Section 12(4) of Chapter III lays down that there shall not any time, be more than one recognized union in respect of the same undertaking. Vide Section 20(2) of the MRTU & PULP Act, certain sections of the I.D. Act as set out in Schedule I to the MRTU & PULP Act were amended by inter alia introducing the expression "recognized union" in those sections. The said Section 20(2) of MRTU & PULP Act is reproduced hereunder:

20. Rights of recognized union: (1)...

(2) Where there is a recognized union for any undertaking,

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted u/s 3 of the Central Act;

(b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except through the recognized union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking;

and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I.

19. The issue canvassed before us primarily concerns applicability of two sections of the I.D. Act, namely, Section 10(1) and Section 36(1). Section 10 deals with reference of disputes to Board, Courts or Tribunals while Section 36 deals with representation of parties.

20. The reference in the case in hand is governed by the said Section 10(1) r/w Section 12(5) of the I.D. Act. By the Maharashtra amendment, there was no change brought about insofar as Section 10(1) is concerned. It reads as under:

10. Reference of disputes to Boards, Courts or Tribunals, (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing,

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant

to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a tribunal for adjudication:

Provided that....

Provided further that....

Provided also that....

21. Section 36(1) of the I.D. Act, however stood amended by the Maharashtra amendment by which a "proviso" was added to it. Section 36(1) as it stands after the Maharashtra amendment reads as under:

36. REPRESENTATION OF PARTIES. (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

Provided that, where there is a recognized union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognized union.

22. On a plain reading of the aforementioned Sections 10(1) and 36(1), we find that though there is a qualification provided in Section 36(1) by adding a proviso by the Maharashtra amendment, inasmuch as after the Maharashtra amendment, only a recognized union is entitled to represent a workman (except in a proceeding where the legality or propriety of an order of dismissal, discharge, etc of an employee is under consideration), there is no such qualification laid down in Section 10(1) and there is no such constraint upon the appropriate Government in forming its opinion whether any industrial dispute exists or is apprehend. Thus, Section 10(1) does not lay down that in arriving at its opinion the appropriate Government is required to consider whether the dispute is raised by a recognized union or not.

23. At this juncture, we may also refer to Section 10(2) of the I.D. Act which

deals with joint reference. It may however, be borne in mind that the present case is a case of reference u/s 10(1) as opposed to case of reference u/s 10(2). By the Maharashtra amendment, though Section 10(1) of the I. D. Act was left untouched, Section 10(2) was, however, amended to introduce the words underlined hereinbelow in the said Section 10(2), which reads as follows:

10(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court Labour Court, Tribunal, or National Tribunal, the Appropriate Government on such application being made by a union recognized for any undertaking under any law for the time being in force, and in any other case, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

24. Thus, Section 10(2) provides that an application is required to be made in the prescribed manner by both the parties, whether jointly or separately, for a reference of the dispute and it is mandatory that such application (insofar as workmen are concerned) is made by a recognized union. It can therefore be seen that by the Maharashtra amendment though the qualification has been introduced in Section 10(2) of the I. D. Act, no such qualification is provided for u/s 10(1) of the I. D. Act. Had the legislature intended that even a reference u/s 10(1) is required to be raised only by a recognized union, (insofar as its application to the State of Maharashtra is concerned), Section 10(1) would have also been amended accordingly. It has in its wisdom not done so.

25. Raising a dispute for reference u/s 10(1) of the I.D. Act before the Appropriate Government is one thing and being represented u/s 36(1) at the time of adjudication before the Industrial Adjudicator is another. In other words, there is a distinction between seeking a reference before the Appropriate Government and prosecuting the adjudication before the Industrial Adjudicator. Both are at different stages and before different fora/authorities. While under the MRTU & PULP Act there is a specific provision vide Section 21(1), which places an embargo on an employee to "act or appear or be represented" in a proceeding relating to unfair labour practice in respect of items 2 and 6 of Schedule IV unless it is through a recognized union, we do not find any such embargo in the I.D. Act except u/s 36(1) proviso introduced by the Maharashtra amendment, which speaks only about "representation" by the recognized union.

26. It is now well settled that the appropriate Government while exercising its power u/s 10(1) of the I.D. Act, performs only an administrative function and the appropriate Government's order of reference is only an administrative order and not a judicial or quasi judicial order. Though the appropriate Government can examine the matter prima facie, it cannot however dwell into the merits of the dispute. There is no lis before the appropriate Government and it does not determine the rights of the parties by referring the dispute to an Industrial Adjudicator. u/s 12(5) the appropriate Government is only to arrive at its subjective satisfaction that there is a case for reference. Though not beyond the

pale of judicial review, the appropriate Government enjoys wide discretion. Unless the reference is based on grounds irrelevant, extraneous or not germane to the exercise of powers, it cannot be questioned in exercise of powers of judicial review. Section 12(5) of the I. D. Act further provides that if reference is refused, reasons are required to be given. Thus, considering the fact that in the present case reference is allowed, the scope of judicial review of the order of reference would still be narrower. Significantly, in the present case, it cannot be disputed by the petitioner company that there was an apprehension of disturbance of industrial peace inasmuch as the petitioner company had themselves approached the Industrial Court and taken a status quo order (annexed as Exhibit "H" of the petition) against the respondent No. 1 union from starting any type of agitation.

27. At the time of making a reference, the appropriate Government is not required to look into the issue as to who is to ultimately represent the workmen in the adjudication before the Industrial Adjudicator. In a given case, though the dispute may have been raised by an unrecognized union for reference, at the time of adjudication before the Industrial Adjudicator, the possibility that the recognized union may be persuaded to espouse the cause of the workmen owing allegiance to an unrecognized union cannot be ruled out.

28. Considering the above, we are unable to persuade ourselves to opine that in view of Section 36(1) of the I. D. Act which gives exclusive right to the recognized union to represent the workmen at the time of adjudication of the dispute, that at the very threshold i.e at the stage of raising the dispute before the appropriate Government, the workmen of the unrecognized union, can be shown the door as the dispute is not raised by the recognized union of the undertaking. It is to be noted that in the present case, the remedy of contract labour workmen of individually approaching the Industrial Tribunal u/s 2A of the I. D. Act is not open to them inasmuch as it is not a case of discharge, dismissal, retrenchment, termination or suspension, nor is the remedy under the MRTU & PULP Act available to them, it not being a case of admitted relationship of employer employee. Thus, at the stage of making a reference u/s 10(1), in our view, it is not mandatory for the appropriate Government to consider whether or not the dispute is raised by the recognized union. We may reiterate that the appropriate Government does not determine the rights of the parties by referring the dispute to an Industrial Adjudicator. It is, therefore, not possible for us to read the "proviso" to Section 36(1) (introduced by the Maharashtra amendment) in Section 10(1) of the I. D. Act and hold that even at the stage of reference the unrecognized union has no locus to raise the dispute for reference u/s 10(1) of the I. D. Act. It cannot be lost sight of that the I. D. Act is a Central Act and its applicability in the State of Maharashtra is to be read only to the extent specifically amended by the State amendment and the Courts would always be slow in stretching the State amendment so as to read something more than what is provided for in the unamended sections of the Central Act. Subject to what is stated hereinbelow, the answer to the question formulated in para 2 above is

thus answered in the affirmative and we hold that a reference can be made by the Appropriate Government at the instance of an unrecognized union u/s 10(1) of the I. D. Act 1947.

29. We may clarify that we may not be understood to have said that the other requisites, if any, for raising the dispute (i.e. the dispute being raised by an appreciable number of workmen etc.) need not be looked into by the appropriate Government. Industrial peace would indeed be a far cry if the splinter groups of different unions are permitted to raise a dispute for reference to the appropriate Government.

30. We may state that before arriving at our conclusion hereinabove, we have taken into consideration the rulings referred to in the written submissions submitted by the learned Counsel for the parties as also the other rulings cited across the bar. In the case of Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha (supra) and the case of International Airport Authority of India v. International Air Cargo Workers Union, 2009 (supra) referred to in the written submissions, the Apex Court was essentially dealing with the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. The issue of maintainability of a reference by the appropriate Government u/s 10(1) at the instance of an "unrecognized union" did not fall for consideration for the Apex Court. In fact, the Gujarat Electricity Board case was a case of reference u/s 10(2) (i.e. joint application) and not u/s 10(1). Both the cases arose from a proceeding before Industrial Adjudicator and were not at the stage of reference before the appropriate Government u/s 10(1) of the I. D. Act. Moreover, the said cases did not originate from the State of Maharashtra and the Apex Court in the said cases, was therefore not dealing with the Maharashtra amendment to the I. D. Act. As such, the said cases would have no application to the issue raised before us in the present petition. The case of Bombay Union of Working Journalist v. The Hindu, Bombay (supra) relied upon by the petitioner company in their written submission, would also not be applicable inasmuch as in the said case the question before the Apex Court was essentially whether an individual dispute of an employee who was terminated from employment can be regarded as an industrial dispute within the meaning of Section 2(k) of the I.D. Act. That case is of the year 1961 which is prior to the introduction of Section 2A in the I.D. Act vide the amendment of the year 1965. Moreover that case was prior to the Maharashtra amendment of 1972, whereby the concept of recognized union was introduced in the I.D. Act and therefore there was no issue pertaining to the espousal of the cause being supported by a "recognized" union which was being considered by the Apex Court. We have also perused the other rulings cited before us across the bar. The said rulings do not specifically deal with the point raised before us and would not apply to the facts and circumstances of the present case. Insofar as other aspects of the matter are concerned, which have been faintly contended before us and do not find place in the written submissions, in our view, the Industrial Adjudicator would be the appropriate forum to adjudicate upon those aspects and we do not find any fault in the

impugned order of the appropriate Government in allowing the reference after having prima facie examined whether a case for reference is made out. It would be open to the parties to raise and for the Industrial Tribunal to frame preliminary issues on the points in dispute.

31. In light of the aforesaid discussion, we do not find that the impugned order of reference suffers from any error apparent so as to exercise our extraordinary writ jurisdiction to interfere with the same. Consequently, rule is discharged. No order as to costs.

32. We make it clear that we have not expressed any opinion insofar as the merits of the dispute is concerned. Except for the limited issue raised before us as reflected in para 2 hereinabove, all issues are left open to be decided by the Industrial Tribunal and the same shall be decided without being influenced by any observations in this judgment.