

(2006) 05 DEL CK 0242

In the Delhi High Court

Case No : Writ Petition (C) 2961, 2962 and 2963 of 2005 and 7489-758 of 2006

Bhupat Singh and Others

APPELLANT

Vs

Hindustan Times Ltd. and Others

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(3), 12, 12(4)

Citation : (2006) 05 DEL CK 0242

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; J.P. Cama Gopal Jain and Deepali Sharma for respondent No. 1 and Rajeev Nayyar and Darpan Wadhwa, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these proceedings under Article 226 of the Constitution of India, a direction has been sought to respondents, to make a proper and suitable reference and also quash the existing reference made on 2.2.2005, by respondents 3 and 4. The petitioners have also sought for an appropriate direction that the exclusion of reference on account of omission of names of 47 workers is unsupported by law.

2. The three original petitioners are office bearers of the Hindustan Times Employees Union. The said Union was registered in 1994 under the Trade Unions Act. The said Union and the Hindustan Times Limited, the first respondent in these proceedings, had entered into a wage settlement on 22.9.1989. The said parties had also entered into another settlement with regard to terms and conditions of workers of the first respondent on 24.1.2001 and 12.8.2002. It has claimed that certain decisions were taken in a meeting held between the management of the first respondent and the Hindustan Times Employees Union on 12.8.2002, relating to staff requirement in various departments, overtime payments etc.

3. The petitioners rely on a letter dated 24.7.2000 written by the first respondent in the wake of apprehension of workers that the printing work of the national edition of the "Hindustan Times" was being shifted. It is alleged that the latter had assured that no printing work would be shifted to any outside agency except on exigencies of work and that the first respondent would not declare its workmen surplus.

4. The petitioners claim that in spite of assurances the respondents 1 and 2 entered into an arrangement for printing of newspaper by the second respondent appointed contractors and also changed service conditions. The petitioners allege that the second respondent was appointed as contractor and the service conditions of employees, by appointing them on contract basis thus depriving due wages resulting in weakening of the Union and also violating existing terms and conditions, in contravention of Section 9-A of the Industrial Disputes Act, 1947 (hereafter "the Act").

5. The Union preferred a statement of claim on 10.9.2004. It is claimed that this was replied to by the said respondents before respondents 3 and 4. It is alleged that the 4th respondent directed first two respondents not to change conditions of service by terminating employment of any workman. In this background, it is alleged that unilaterally on 3.10.2004, the first respondent terminated the service of 362 employees in terms of Section 25FF of the Industrial Disputes Act. By this notice, the respondents intimated the workmen in the printing undertaking that ownership of that undertaking had been transferred and taken over by H.T. Media Limited, the second respondent w.e.f. 2.10.2004 under an agreement dated 1.10.2004. It was also stated that the second respondent decided not to take over the services of the workmen engaged in the printing undertaking (the first respondent), and that their services would come to an automatic end w.e.f. 3.10.2004 as per provisions of Section 25FF of the Industrial Disputes Act. Individual letters were sent to all the 362 workmen along with cheques towards the compensation payable.

6. In the meanwhile, on 10.9.2004, the Union had approached the 3rd respondent seeking to raise industrial dispute and for initiating conciliation proceedings, in respect of the proposal to shift the print line to the second respondent (H.T. Media Limited) and terming it as mala fide and illegal. It was also claimed that the new arrangement contemplated amounted to an illegal change and was sought to be given effect to, contrary to Section 9-A of the Industrial Disputes Act.

7. The Union relies upon certain correspondence addressed to the first respondent on 4th - 6th of October, 2005, as well as letters written to the Minister, Industry and Labour, Government of NCT on 11.10.2004. It also relies on a pleading dated 24.11.2004 urged in support of its statement of claim before the 4th respondent (Conciliation Officer) in which it alleged that the action of the management amounted to declaration of a mala fide and illegal lock out. The Union claimed prohibition of continuation of such lock out. Other pleading/

additional claims was lodged along with a covering letter on 30.11.2004 in which the Union stated the conciliation proceedings had been closed on 8.11.2004 The Union also stated the failure report had been apparently submitted as per its understanding.

8. On 2.2.2005, the appropriate Government, pursuant to the statement of claim dated 13.10.2004 and after considering the contentions of the management and the first two respondents, made a reference u/s 10 of the Industrial Disputes Act. The reference reads as follows: "Whereas on consideration of report submitted by Conciliation Officer, u/s 12(4) of the Industrial Disputes Act, 1947 I, Narender Kumar, Secretary (Labour), Government of National Capital TERRITORY of Delhi, am satisfied that Labour dispute in respect of the matters specified in the Schedule exists between the management of (1) M/s. The Hindustan Times Ltd., Hindustan Times House, 18-20, Kasturba Gandhi Marg, New Delhi (2) M/s. H.T. Media Ltd., Hindustan Times House, 18-20, Kasturba Gandhi Marg, New Delhi, that the same should be referred for adjudication to Industrial Tribunal of Delhi constituted under the said Act.

Now, Therefore, in exercise of powers conferred by Section 10(1) d and 12(5) of the said Act, read with Govt. of India, Ministry of Labour Notification No. S-11011/2/75/DK (1A), dated the 14th April, 1975, hereby refer the dispute to the Industrial Tribunal No. III presided over by Sh. M.C. Garg for adjudication.

SCHEDULE

TERMS OF REFERENCE

Whether the action of management of M/s. Hindustan Times Ltd. in transferring the ownership of its Printing undertaking to M/s. H.T. Media Ltd. w.e.f. 2.10.2004 and terminating the services of workmen whose names are given in Annexure "A" by invoking the provisions of Section 25FF of Industrial Disputes Act 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect.

Sd/-

(NARENDRA KUMAR)

SECRETARY (LABOUR)

GOVT. OF NCT OF DELHI

9. After issuance of notice and completion of pleadings, in these writ proceedings, the matter was heard for some time on 29.9.2005, and further arguments were heard on 19.9.2005. During the course of the latter date of hearing, learned Counsel for respondents 3 and 4 produced the records. They showed that the demand to the action of the management amounting to an illegal lock out, raised on 24.11.2005 had been considered and rejected by an order dated 13.5.2005. Counsel for the petitioner submitted that the order was never communicated nor adverted to in the counter affidavit of the respondents

3 and 4. Learned counsel for the said respondents stated that the orders would be furnished to the parties which was done. The petitioner, Therefore, sought and was granted leave to amend the pleadings to suitably incorporate a challenge to the order dated 13.5.2005. The matter was thereafter heard and orders were reserved.

10. The petitioners also allege that while referring the industrial dispute to the Labour Court, the respondent Nos. 3 and 4 wrongly excluded the names of 47 workmen who were employees of the first respondent. It is averred that such exclusion is premised upon those workmen having entered into settlements. It is alleged that the settlements could not have been taken into account and were not binding; Therefore the reference dated 2.2.2005 also had to include the names of such workmen, as aggrieved parties. In support of these petitions, 269 other workmen filed affidavits, individually.

11. The first two respondents have resisted the petitions and stated that the grievance with regard to exclusion of 47 employees from the reference is unfounded since those workmen had entered into individual settlements in respect of their claims. Having accepted the offer of the management and in the absence of such workmen who did not come forward and challenge the settlements through appropriate proceedings, the writ petitions to that extent cannot be maintained by the petitioners or indeed by the Union through the petitioners. It is claimed that the petitioners cannot have any legal capacity to represent the 47 workmen who ceased to have any grievance against the management.

12. The first respondent has claimed that entire media business except the printing undertaking at New Delhi was transferred on 1.7.2003 to second respondent as part of the corporate re-structuring of the first respondent and due to infusion of funds into the media business. It is claimed that the transfer process involving assigning/transfer of assets and properties of the first respondent relating to the media business was effected w.e.f. 4.12.2003. It is also alleged that all employees of the first respondent were transferred to the second respondent on continuity of service basis except the petitioners and a few other members of the Union, who despite opportunities, chose not to accept the transfer and declined to join duties with the second respondent. The respondent management also avers that it entered into an agreement with the second respondent by which the latter had given some printing work to the former to be carried out on a job to job basis and resultantly, the printing undertaking of the first respondent continue to operate. It is alleged on 31.7.2004, the second respondent informed the first respondent that he would not require such printing services. The first respondent informed its employees through the Union that there would be no printing work through a letter dated 2.8.2004 This led to the Union issuing a letter to all its members to attend a General Body Meeting on 1.9.2004

13. The first respondent has thereafter outlined certain steps which were taken

consequent to the decision of the Union to held protest/demonstration. It does not deny that the Union had preferred a statement of claim before the Assistant Labour Commissioner and that proceedings were held eventually leading to the failure report and the impugned reference.

14. The first respondent has also relied upon copies of some of the settlements whereby one of the 47 employees, settled all his claims with the management and accepted the amounts payable.

15. The first respondent has justified its action by stating that at the time of formation, the second respondent was undoubtedly a subsidiary company but upon infusion of equity other investors acquired significant stake and, Therefore, the second respondent is not controlled by it. It also justifies its action handing over the printing work as a part of its business re- organisation.

16. The respondents 3 and 5 in their amended counter affidavit have contended that the reference in respect of 315 employees for adjudication was made on a proper appreciation of the material. It is claimed that the first respondent had filed individual settlements in the cases of 47 workmen who received their dues fully and finally; since the disputes of those workmen had been settled mutually, the appropriate Government felt that there were no disputes as far as they were concerned, on the date of reference.

17. The respondents 3 and 4 also averred that the industrial dispute was referred on the basis of a failure report submitted by the third respondent u/s 12(4). The reference to Section 10(3) of the Act by the petitioner has been disputed; it is stated that the provision can be invoked only if there is a strike or lock out. The grievance made out that the issue of lock out was improperly withheld from the reference is disputed; it is claimed that such averments are contradictory since termination of the employees and lock out cannot co-exist.

18. The respondents 3 and 4 averred that statement of claim was filed on 13.10.2004 on which conciliation proceedings were held and closed on 8.12.2004 since no settlement could be arrived at between the parties. Therefore, on receipt of the failure report, a reference was made to the Industrial Tribunal for adjudication. It is averred that a personal hearing was given on 17.1.2005 to explore the possibilities of settlement since there was no such settlement at sight, the industrial dispute was referred. It is also claimed that the order dated 13.5.2005 was dispatched to all the parties.

19. Mr. B.K. Pal, learned Counsel for the petitioner submitted that exclusion of the 47 workmen from the reference amounted to improper exercise of discretion by the appropriate Government. It could not have decided not to refer the disputes relating to those employees on the basis of materials furnished by the management. It was claimed that the respondents 3 and 4 are under a duty or obligation to refer the entire dispute which meant that cases of all the workmen on whose behalf the Union espoused the claim had to be referred. Not to refer the cases on the assumption that they had settled in fact amounted to an

adjudication, beyond the competence of the appropriate Government. He relied upon the decision of the Supreme Court reported as Mahesh Transport Company Vs. The Transport and Dock Workers Union, for the contention that unilateral change of conditions of workers' services by the management without agreement by the workers, was a dispute which had to necessarily be referred by the appropriate Government.

20. Learned counsel submitted that the workmen had authorized only Union to enter into settlements. In the absence of any involvement of the Union, any alleged settlement arrived at was not binding at least upon such workmen, as in the present case it prejudiced their interests. Learned counsel relied upon the judgment reported as Brooke Bond India Ltd. Vs. The Workmen, to say unauthorised settlement could never bind the Union which could always raise the issue of and seek an industrial dispute.

21. Learned counsel submitted that the appropriate Government acted arbitrarily in not referring the issue as to where the management's action amounted to an illegal and unjustified lock out. It was submitted that the Union had raised the issue of proposed transfer which led to conciliation in September 2004 During pendency of the proceedings, the impugned action by way of a notice, was issued by the first respondent on 3.10.2004 This led to filing of another statement of claim on 13.10.2004 Although the statement of claim did not directly refer to an illegal lock out, it did refer to illegal change in the terms and conditions amounting to violation of Section 9-A of the Act. Before the reference was made an additional claim pleading was made on 24.10.2004 Admittedly, further hearing took place on 17.1.2005 when the issue of lock out had been specifically raised the appropriate Government ought not have virtually adjudicated upon it ruling it out at the time of framing and referring the dispute. The non inclusion of that point rendered the reference illegal to that extent and a suitable directions had to be, Therefore, issued correct reference.

22. Learned counsel submitted that there is no question of the alleged transfer being a bona fide re-organisation of business. He pointed out to the share holding pattern of the second respondent and submitted that it was creation of the first respondent with the sole object of avoiding liabilities vis-?-vis workmen. One of the integral questions Therefore which would arise is whether the action amounted to lock out as far as petitioners and other employees were concerned. Although the expression "lock out" was not used, that thus did not determine whether the management's action amounted to a lock out. The Courts are guided by the substance of the act and not merely by the words or expressions used. In this case, the real and direct effect of the first respondent's action, in to preventing the workmen from entering the premises and carrying on their duties is, Therefore, felt within the expression "lock out" as defined under the Act. Learned counsel lastly contended that the reasons for not including lock out as a point of reference cannot stand the scrutiny of law. The mere omission to use the term in the original settlement of claim could not have fettered the appropriate

government while formulating that issue as a point of reference. Further more before the reference was made, the point was indeed raised on 24.11.2005. The reason given by the order dated 13.5.2005 is contrary to the record and also vitiated by non-consideration of relevant factors. Learned counsel submitted that the basis of the said orders dated 2nd Aug, 2004 and 3rd Oct, 2004 are false, fictitious and benami as such are bad in the eye of law. It is also submitted that the acts of respondent 3-4 are based on extraneous and irrelevant considerations in view of which they failed to take any action as required in terms of Section 10(1) and 12(5) as well as in terms of Section 10(3) of the Act 1947. It was claimed that the act of respondent No. 1-2 informing H.T. Media Ltd. and awarding printing work to it is arbitrary, unilateral and illegal being prejudicial to the rights of employees as well as vocative of the settlement dated 12/8/2002 as there is no reason except mala fides and ulterior motives of the first respondent in violation of contracts of service as well as Section 9-A of the Act.

23. Counsel submitted that Respondent Nos. 3 and 4 illegally adjudicated upon the matter for irrelevant and extraneous considerations by not referring the issue of termination of service 47 employees as well as non-consideration of such an action amounting to declaration of illegal lock out and by not prohibiting the same as prayed for by the petitioners.

24. Mr. J.P. Cama, learned senior counsel appearing for the managements, submitted that once the order dated 13.5.2005 was issued by the appropriate government, it is not open to challenge until and unless the Petitioners could prove that the decision making process was vitiated in any manner. It was submitted that the order was not challenged on any legally sustainable grounds. The determination by the executive authority that there was no question of there being any industrial dispute in relation to the 47 workers, who had finally settled with the management, or that there existed any industrial dispute, in relation to a claim that the management had indulged in an illegal lockout, could not be gone into by the court, in judicial review, under Article 226 of the Constitution of India. It was submitted that each order, referring a dispute to adjudication, under the Industrial Disputes Act, though setting the judicial machinery in motion, nevertheless is an administrative order, and the writ court's scrutiny is confined to administrative or public law grounds. Reliance was placed on the decision in Prem Kakar Vs. State of Haryana and Another, Bombay Union of Journalists and Others Vs. The State of Bombay and Another, and The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, Counsel relied upon the judgment of the Supreme Court, in The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, for the proposition that in the absence of a particular demand, there can be no industrial dispute on that point or matters. It was submitted that the Petitioners, and the workmen, generally, did not claim that the respondents had indulged in an illegal lockout; Therefore, the appropriate government was justified in concluding that there was no such industrial dispute.

25. Counsel submitted that the authorities proceeded on the need or existence of an industrial dispute on the date of reference and the need for satisfaction of the appropriate government in this behalf, a requirement of the Act itself. In the light of the above, it is necessary for the workmen, in the present case, to at least make out a demonstrable prima facie case of "lock out". It is not enough to merely refer to "Lock Out" and that too in oral submission before the Assistant Labour Commissioner, as claimed by the writ petitioners. Counsel submitted that "Lock Out" as interpreted by the Hon"ble Court in The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, means a temporary stoppage of work by the management as a weapon of coercing workers to "accept his proposals" just as a strike is a weapon in the worker's armory. It was contended that there is nothing on record to show that the Respondent Management had made any demands upon the workmen or that they were attempting to compel them to "accept their proposals" by the coercive process of a "Lock Out"; on the contrary the workers case, throughout has been that the management has illegally "transferred" the printing establishment and Therefore illegally "terminated" the concerned workers.

26. It was contended that the observation of the Respondent Authority in the impugned order to the effect that the union has not pleaded "Lock Out" is Therefore merited. It was also contended that there is absolutely nothing in the entire record making out a case of "Lock Out" sufficient to satisfy the ALC that an industrial dispute regarding a "Lock Out" existed in the present case. Without satisfaction the ALC has no jurisdiction to make any reference on a purported "Lock Out".

27. Counsel submitted that the main challenge in the writ petition is essentially/ primarily to the reference dated 2.2.2005 and in the guise of that challenge the Petitioners have sought to raise a bogey of a lock out through the back door. These proceedings Therefore, cannot be used as a roving and fishing inquiry and are an abuse of process of Court. It is clear that the issue of lockout was only an afterthought and was being used as a backup in case the primary challenge failed. Further and it was submitted that the ultimate result in both the cases of Section 25FF and lockout is the same. It was submitted that in the light of the judgment of the Supreme Court in the matter of U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, to the effect that industrial disputes cannot be raised before the High Court under Article 226 and normally the court will not entertain such a Writ Petition under Article 226, the present writ petition is liable to be dismissed in liming

28. Before proceeding to analyze the rival contentions, it would be necessary to notice the order dated 13-5-2005 issued by the appropriate government, which is extracted below:

GOVERNMENT OF THE NATIONAL
CAPITAL TERRITORY OF DELHI

OFFICE OF THE SECRETARY (LABOUR);

5- SHAM NATH MARG

DELHI-54

No. F.24(188)/05/Lab./4607-609 Dated : 13.5.2005

Hindustan Times Employees Union made an application dated 09.02.05 to the Secretary (Labour) stating that union raised an Industrial dispute in respect of 362 dismissed employees of Hindustan Times Ltd. which was duly espoused by the union but names of 47 employees have been left out and the reference does not contain the issues regarding illegal lock out and its prohibition as also the formation of H.T. Media Ltd. and transfer of printing work to it. The union requested for necessary corrigendum in the order of reference.

A copy of this application was sent to the management for its comments/reply. The management in its written submission dated 30.03.05 stated that the issues raised by the union in this application are pending before the Hon"ble High Court of Delhi in Writ Petition No. 2961/63 of 2005 in case titled Bhupat Singh and Ors. v. Hindustan Times Ltd. and Ors. seeking relief on the issues raised in the said application. The management has stated that the matter is subjudice before the Hon"ble High Court and further proceedings before the Industrial Tribunal have been stayed at the behest of employees union and requested not to initiate any action on the application of the union. The management also enclosed a copy of the said Writ Petition and a copy of the order dated 22.02.05 in support of their plea.

A copy of the reply of the management was given to the union. but the parties were given opportunity of being heard. Both of them have stated their respective written positions. I have gone through the application of the union, reply of the management and the documents placed on record. As regards the request of the union for inclusion of 47 names, it is stated that the management filed settlements in respect of these 47 employees before the dispute was sent for adjudication. As the 47 employees had settled their dispute, no dispute existed between the management and the said 47 employees and their names have not been included in the order of reference. Copies of settlement sent by the management were provided to the union in these proceedings but union has not come out with anything contrary to it. As such the request of the union for inclusion of 47 names in the order of reference is without any merit. The union was, however, given opportunity to file a separate case with fresh espousal if it thought that these 47 workmen had agreed for full and final settlement under duress and threat so that a separate reference could be made. The union, however, failed to espouse this cause of the 47 workers. As regards the plea of the union regarding illegal lock out and its prohibition, it is stated that union has not pleaded lock out in the statement of claim dated 13.10.04. The union has challenged the action of management in transferring the ownership of Printing undertaking to M/s. H.T. Media Ltd. by invoking the provisions of Section 25FF of

I.D. Act, 1947 and, thereby, terminating 362 workmen which has been taken into consideration while referring the Industrial dispute. The plea of the union regarding lock out is not borne out from the statement of claim filed by the union. The issue of transfer of Printing undertaking to M/s. H.T. Media Ltd. has already been referred for adjudication in which M/s. H.T. Media Ltd. is also a party to the dispute. Moreover, the issues raised by the H.T. Employees union are subject matter before the Hon"ble High Court of Delhi and as such no action is called for on the application of the union.

(Narendra Kumar)

Secretary (Labour)

29. The pleadings and contentions of parties show that the Hindustan Times Ltd had entered into wage settlements and agreements with its workmen, from time to time. As per the petitioners, on 24-7-2000, an assurance was held out by the management that its printing activities or business would be continued. The petitioners had approached the conciliation officer, in September, 2004, alleging that the print line of the Hindustan Times was being shifted; they sought intervention, and raised a dispute. Events occurred in rapid succession; the Hindustan Times intimated on 3-10-2004 that the printing business was being handed over to H.T. Media Ltd, which had decided not to continue with the employment of the petitioners. The petitioners filed a statement of claim on 13-10-2004; in this it was alleged that a direction was issued on 10-9-2004 by the conciliation authorities not to change the terms and conditions of workmen. It was also alleged that the transfer was not legal, or bona fide, and that it contravened Section 9-A of the Industrial Disputes Act. The workmen also alleged that the management had been asked on 6th and 8th of October 2004 to withdraw the notice of 3-10-2004. The management filed its reply on 25-10-2005; the petitioners even filed a reply. The records show that the last date when conciliation proceedings were held, was on 8-11-2004. The petitioners moved conciliation officer thereafter on 24-11-2004, seeking a prohibitory order, and alleging for the first time that the management's action amounted to a lockout. The appropriate government made the reference, after receipt of the failure report, on 2-2-2005.

30. In the order dated 2-2-2005, the appropriate government referred the issue of legality of the transfer of the printing activity by Hindustan Times Ltd to H.T. Media Ltd, in respect of 315 workmen; names of 47 workmen were left out. The order dated 13-5-2005, dealt with both the issue of non inclusion of 47 workmen, and the non-reference of the point relating to allegation of lock out. The appropriate government was of the opinion that the management had produced material to show that it had settled with 47 workmen; the Union was given an opportunity to show that those workmen were aggrieved, in respect of such settlement, but it was unable to show otherwise. The appropriate government also ruled out reference of the issue of lockout, on the ground that no materials on record justified reference to such an issue, and the union had not

raised the dispute, when it made the statement of claim, on 13-10-2004

31. "Industrial dispute" and "Lock-out" are defined in Section 2(k) and (l) of the Act, respectively, as follows:

(k) 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;

(l) lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

Section 10 of the Act, in that it empowers the reference of industrial disputes for adjudication by Tribunals/ Labour Courts, reads as follows:

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 where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c)

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this Sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

(1-A) Where the Central Government 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 dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, 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 National Tribunal for adjudication.

(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, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer to such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its

adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments

Point No. 1 : Whether exclusion of 47 workmen in the reference is illegal

32. The first question is whether the reference, in so far as it does not include the names of 47 workmen, in the schedule, is illegal, and calls for suitable directions. An industrial dispute, as the definition indicates, is a dispute or difference between a workman and his employer, in relation to his employment, non-employment, or terms of employment.

33. The Supreme Court, in *Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan*, pointed out after considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favor of the view that a dispute between an employer and a single employee cannot per se be an industrial dispute but it may become one if it is taken up by a Union or a number of workmen:

the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of adjudication under the Act, when the same had not been taken up by the Union or a number of workmen".

However, the view was clarified in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . The Supreme Court held that not every dispute relating to persons can be the subject matter of a reference: "Person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act, but must be one in whose employment, non-employment, terms of employment or conditions of labour the

workmen as a class have a direct or substantial interest".

The court summarized the correct approach as follows:

To summarise : having regard to the scheme and objects of the Act and its other provisions, the expression, `any person" in Section 2(k) of the Act, must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are : (1) The dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other and (2) the person regarding whom the dispute is raised must be one in whose employment/non- employment, terms of the employment, or conditions of labour, (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest, the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a ``workman`` within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest

It would, at this stage be necessary to notice provisions contained in Section 18 and 19 of the Industrial Disputes Act. They are extracted below:

18. Persons on whom settlements and awards are binding. - (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or Clause (b) 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.) of the Act.

19 PERIOD OF OPERATION OF SETTLEMENTS AND AWARDS.

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months [from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A:

34. In the light of the exposition of law, in the Workmen of Dimakuchi Tea Estate case, as well as Sections 18 and 19, what has to be examined is in the event of a section of the workmen, who initially raised the industrial dispute, later entering into individual settlements with the management, is it open for the Union which espoused the industrial dispute, to insist that such workmen have to be included as parties to the reference. This question was addressed to a certain extent, by the Supreme Court in National Engineering Industries Ltd. Vs. State of Rajasthan and Others, . It was held as follows:

If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divide settlements in to two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs

to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter.

35. A joint reading of Sections 18 and 19 would reveal that whereas a settlement arrived at in the course of conciliation proceedings binds all parties, as well as non-parties, including future employees (Section 18(3)), a settlement arrived at otherwise than in the course of conciliation proceedings binds only the parties-Section 18(1). The rationale for this appears to be that industrial disputes are raised under the Act, by Unions, and have to be gone into, by authorities. This mode of collective bargaining through the Union is used to arrive at a settlement; in such an eventuality, all persons working in the establishment are bound by it. However, a settlement by a group of individual workmen, outside the framework of conciliation proceeding, is not accorded the same sanctity. The question is whether in such eventuality, though those individual workmen are bound by the settlement, and do not raise a dispute, can the Union nevertheless insist that the industrial dispute vis-?-vis those workers, subsists.

36. The definition of "industrial dispute" connotes a dispute or difference. If a group of employees, who were initially part of the larger dispute raised on behalf of all (including themselves) however, proceed to enter into a separate compact, or individual settlements with the management, and choose not to participate in the larger dispute, for their own reasons, the question is whether the industrial dispute, survives as far as they are concerned.

37. The objective of the Act is to achieve industrial peace and harmony. The mechanism of referring disputes after a compulsory conciliation proceeding is the legislative determination that all efforts to ensure peace, and continued industrial production should be exhausted. Even during the pendency of industrial disputes, before the authorities, the appropriate government is empowered to prohibit lock outs and strikes, to avoid disruption of industrial activity and services. The normal situations which the courts have often dealt with are those where conciliation proceedings encompass settlements, which also get included in the reference. The consistent view has in such situations been that to the extent the settlement is binding, even on non-parties, no industrial dispute can be referred.

38. If the objective underlying the Act, and the scheme of the provisions, viz Sections 2(k), 2(p); 2(s), 10, 12, 18 and 19 are kept in mind, then there can be no question of a surviving industrial dispute in the case of those workmen who enter into binding settlements, which bind them and the management, u/s 18(1). In such situations, it could be possible that the dispute survives, as it is a difference, or unresolved dispute, as far as the workmen who are represented by the Union are concerned; they can insist upon a reference. But in the absence of

those who secure the benefits of settlement, and walk out of the dispute, complaining that the terms of such settlement are unfair, or are for some reasons known to law as not binding, the others cannot insist that the reference must include even those who have entered into individual settlements. This is because those workers and the management are, by operation of Section 18(1) bound by such terms, and there can be no industrial dispute regarding their grievances, as they stand redressed, by the terms of the settlement. The Union or the larger body of workmen cease to have locus standi in respect of those workmen. The only situation where the disputes can be raised by such workmen is as to its not being binding, inspire of their having signed or executed it, on account of grounds peculiar to them; in such case, the character of the dispute would be the legality, or binding nature of those settlements, which has to be raised as a separate industrial dispute, before the appropriate government. That situation does not exist here.

39. The up-shot of the above discussion is that the complaint by the petitioners that 47 workmen were illegally excluded from the reference, is without merit.

Point No. 2 : Whether exclusion of the question relating to illegal lockout, in the reference is illegal

40. The facts required for determining this point are narrow. When the petitioners went to the conciliation officer on 13-10-2004, admittedly there was no mention of any illegal lockout. Their whole case was, and continues to be, that the transfer of the enterprise or undertaking to HT Media Ltd is not bona fide, and is a device to defeat their entitlements. The management asserts that the infusion of outside capital in the HT Media Ltd, and the scheme of corporate restructuring adopted by it, necessitated the cessation of printing activity by it, and entrustment/ handing it over to HT Media Ltd. The question of lockout not being taken in conciliation proceeding, cannot, according to it, be raised.

41. Ordinarily, a dispute or difference which gets referred, is one within the contemplation of the party raising it. Therefore, a fair reading of the claim before the conciliation officer, raising the industrial dispute ought to establish that the workmen had contemplated one or the other elements. The original claim, which was considered by the appropriate government, and answered by the management, did not contain a reference to illegal lockout. This was sought to be introduced by way of a separate claim dated 24-11-2004. There is nothing to suggest that the issue was put to the management. The reference dated 2-2-2004 does not advert to the point. However, the order dated 13-5-2005 does deal with this aspect, and states that the plea of the union regarding illegal lock out and its prohibition, was not pleaded in the statement of claim dated 13.10.04, and that the union has challenged the action of management in transferring the ownership of Printing undertaking to M/s. H.T. Media Ltd. by invoking the provisions of Section 25 FF of I.D. Act, 1947 and, thereby, terminating 362 workmen which has been taken into consideration while referring the Industrial dispute. The appropriate government Therefore felt that

the plea of the union regarding lock out is not borne out from the statement of claim filed by the union.

42. The question is whether the workmen can insist that even though the point was not raised, nor was it considered in the conciliation proceedings, a direction ought to be issued to appropriately include it. Though on behalf of the management it was contended that in view of the decision of Sindhu Resettlement Corporation Ltd, if a particular dispute is not raised by the workmen, either with the management, or the appropriate government, it cannot be legitimately be a matter of reference, this strict approach to the power u/s 10(1) was to an extent diluted in the subsequent decisions reported as Shambu Nath Goyal Vs. Bank of Baroda, . The court quoted the dicta of Lord Denning in Beetham v. Trinidad Cement Ltd All KS 244 that a for a ``trade dispute`` to exist, it is not necessary that parties should have come to blows. The court held, in Goyal that an industrial dispute connotes variance between parties in respect of employment, non employment, or terms of employment or with conditions of labour, and that to read into the definition (of industrial dispute) the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section. This decision was later followed in Ram Avtar Sharma and Others Vs. State of Haryana and Another, and Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others,

43. The terms of Section 10 place an embargo on the nature of enquiry that can be embarked upon by the judicial forum or adjudicator, when entering upon reference. Therefore, the Supreme Court has cautioned, that inelegant or defective phraseology in referring disputes, ought not to defeat the rights of parties to seek adjudication of disputes and differences that exist between them (Ref The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, J.K. Synthetics Vs. Rajasthan Trade Union Kendra and Others,

44. The management's contention is that the dispute referred, as legality and justification as to the management's stand of October 2004, invoking the provisions of Section 25FF of the Act 1947 and what relief, cover the points of difference between the parties, and the reference to lockout would be incompatible, and inconsistent with the points of dispute. In Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, , the Supreme Court had occasion to consider the provisions relating to Section 25-FF; it held that:

The scheme of the proviso to Section 25FF emphasizes the same policy. If the three conditions specified in the proviso are satisfied, there is not termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading Section 25FF as whole, it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the

transferee of the undertaking. Thus, the effect of the enactment of Section 25FF is to restore the position which the legislature had apparently in mind when Section 25FF was originally enacted on 4 September, 1956. By amending Section 25FF the legislature had made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation unless; of course, the continuity in their service of employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso.

In this connexion, it is necessary to point out that even before Section 25FF was introduced in the Act for the first time, when such questions were considered by industrial adjudication on general grounds of fairplay and social justice, it does not appear that employees of the transferred concern were held entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee. The present position which results from the enactment of Section 25FF, as amended, is, Therefore, substantially the same as it was at the earlier stage. It is common ground that if a transfer is fictitious to benami, Section 25FF has no application at all. In such a case, there has been no change of ownership of management and despite and apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

The need to exercise the power, bona fide, was again underscored in *Gurmail Singh and Others Vs. State of Punjab and Others*, where the court held as follows:

The Supreme Court itself has visualised such a case and made it clear that if a transfer is fictitious or benami, Section 25FF has no application at all. Of course, in such a case, there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation.

A second type of case which comes to mind is one in which there is in form and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organized differently such as in *Bombay Garage Ltd. v. Industrial Tribunal* 1953 I LLJ 14 and *Artisan Press v. L. A. T.* 1954 I LLJ 424. In such cases, the transferee and transferor are virtually the same and the over-riding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eyes of the Court. (See, *Palmer, Company Law*, 23rd Edn., pages 200-201, paras 8 and 10 and the decision in *Kapur v. Shields* 1976 1 W.L.R. 131, cited therein). These exceptions to the above rules, we think, would still be operative.

45. The above decisions establish that employers can transfer undertakings, in exigencies of business. The question whether an employer can adopt

questionable methods to show the apparent transfer of business which acts as a device to divest the employee of his due rights under the Industrial Disputes Act too was visualized .If there is absolute right in the employer to transfer his unit, even benami, regardless of legal consequences, then the workmen have got no case. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, the Supreme Court held that reorganization of business is within the managerial discretion of the employer but such reorganization should be bonafide and if such bonafide reorganization results in retrenchment of labour, propriety of such reorganisation of business and consequent discharge of surplus labour cannot be interfered with as profitability economy or convenience of the business reorganisation are within the realm of the employer and not the Tribunal or Courts. The Constitution Bench of the Supreme Court in *Anakapalla Co-operative (supra)* held that if a transfer of a business Unit is fictitious or benami, then Section 25-FF of the Industrial Disputes Act will have no application at all and in such cases, there cannot be any change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the terms and conditions of service as before and there can be no question of compensation. The proposition of law was followed by a Division Bench of the Madras High Court in *Spencer Group Aerated Water Factory Employees" Union and Another Vs. The Presiding Officer, Industrial Tribunal and Others*, .

46. In the course of the proceedings arising out of the reference, Therefore, it is open to the petitioners to contend that the transfer to HT Media Ltd was not bona fide, legal and justified. Equally, it would be open to the management to contend that the transfer was bona fide and justified. In the event of the petitioners succeeding to prove their case, the Tribunal can, as per *Anakapalla Co-operative*, decide that there is continuity of service, and draw such inferences as are permissible in law. In the event of the petitioners failing to establish that transfer was not bona fide, or that it was otherwise illegal or unjustified, there can be no situation where an alternative case of lockout, illegal or otherwise, can be set up. Inherent in the concept of lockout is subsistence of the contract of employment. If the petitioners cannot succeed on the point of reference, the logical corollary would be that there was a legally sustainable transfer of undertaking, leading to the consequences envisaged u/s 25-FF.

47. In the light of the above discussion, I am satisfied that the reference adequately covers the dispute between the parties, and the interests of workers to raise all contentions; a direction to include the point, in the reference, is Therefore, not called for.

48. In the light of the above discussion, the reliefs claimed in these writ proceedings cannot be granted. It is however, made clear that nothing said in the course of this judgment shall be construed as an expression on the merits of the industrial disputes referred to the Tribunal. The writ petition is accordingly dismissed, without any order as to costs.