

(1947) 09 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Order No. 67 of 1947

Birla Brothers Ltd.

APPELLANT

Vs

Modak

RESPONDENT

Date of Decision : 22-09-1947

Acts Referred:

Citation : (1947) 09 CAL CK 0002

Final Decision : Dismissed

Judgement

Harries, C.J.—This is an appeal from a judgment of Sen J. dismissing an application for a writ of certiorari and/or prohibition and for an injunction restraining the arbitrator and the Respondent Trade Union from proceeding with a certain arbitration in connection with an, industrial dispute.

2. The facts giving rise to the proceedings are not in dispute and may be shortly stated as follows.

3. The Appellants are a well-known company carrying on business in Calcutta. They also act as managing agents for numerous other companies and they are also closely connected with or interested in other companies.

4. In the month of July, 1946, two trades unions were formed and registered under the Trade Unions Act (XVI of 1926). These unions were called the Ruby General Insurance Employees" Union and the Birla Brothers Employees" Union. The Ruby General Insurance Company, Ltd., is said to be one of the companies in which the Appellants are interested.

5. On September 1, 1946, the two unions amalgamated and the Union so formed took the name of the Birla Brothers Employees" Union and this union is Respondent No. 2 in this appeal.

6. In the autumn of 1946, the Appellants, Birla Brothers, Limited, or their associated companies, dispensed with the services of four employees and In February, 1947, transferred an employee from Calcutta to Budge Budge.

According to the Respondent union, these were acts of victimisation as these employees were prominent members of the Respondent union.

7. On February 8, 1947, there was a general meeting of the members of the union. At this meeting a resolution was passed and a document drawn up which is referred to as a charter of demands. By this resolution and charter the employees of the union demanded, inter alia, reinstatement of the dismissed employees, retransfer of the employee transferred from Calcutta and sweeping and drastic changes in the terms of service and remuneration of the members of the union. The resolution and charter of demands were forwarded to the employers, but no satisfaction was obtained. On February 17, the employees of Birla Brothers and their associated companies served a strike notice on their employers and on February 19, the members of the union ceased work. On February 20, 1947, a large number of strikers were dismissed, but the strike continued.

8. On April 1, 1947, the Industrial Disputes Act (XIV of 1947) which is a Central Act came into force.

9. On May 14, 1947, the Government of Bengal issued an order u/s 7 of the Industrial Disputes Act appointing an arbitrator to adjudicate between the parties in this industrial dispute. The arbitrator named was one Mr. H.G. Waight, who has now been replaced by Mr. S.N. Modak, who is Respondent No. 1 in this appeal.

10. On May 19, 1947, the union called off the strike, but it is alleged that a large number of strikers were locked out and not re-instated.

11. On May 22, the union submitted a statement to the arbitrator or to Government pointing out that a large number of companies interested in the dispute had not been made parties and should be made parties to the arbitration along with Messrs. Birla Brothers, Limited.

12. On June 2, 1947, the Government issued an amended order with a view to include these other companies in the arbitration proceedings. On June 10, 1947, the Appellants filed a statement denying the jurisdiction of the arbitrator. Later, they filed a petition in this Court praying for a writ of prohibition or certiorari to quash the proceedings before the arbitrator and for an injunction, to restrain the arbitrator and the Respondent union from proceeding with the arbitration. A Rule was issued by a learned single Judge of this Court and the matter eventually came before Sen J., who in a full and clear judgment, dismissed the application and discharged the Rule. Hence the present appeal.

13. In the first place it was argued that the Government had never referred any dispute to arbitration under this Act. The order of Government was, it was said, at most an order appointing an arbitrator. No order, it was contended, was ever issued referring any dispute to him.

14. The order issued is in the terms of Form B in the appendix to certain Rules framed u/s 38 of the Industrial Disputes Act. The order is in these terms:

Order.

Whereas an industrial dispute has arisen between Messrs. Birla Brothers, Ltd., of 8, Royal Exchange, Calcutta and their employees as represented by the Birla Brothers Employees' Union of 102-B, Clive Street, Calcutta and it is expedient that the said dispute should be referred to a tribunal constituted under the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased u/s 7 of the said Act to appoint Mr. H.G. Waight, I.C.S., to be the tribunal for adjudication of the said dispute.

The tribunal should meet at a place and on a date to be notified by Mr. H.G. Waight, I.C.S.

By order of the Governor,

A.M. Quraishi,

Secy, to the Government of Bengal.

15. It will be noticed that the appointment of the arbitrator is in terms made u/s 7 of the Act. Section 7 of the Act provides for constituting tribunals for adjudication of industrial disputes. There is nothing in Section 7 concerning references to a tribunal so constituted. It is merely a section empowering the constitution of industrial tribunals. Section 10 of the Act provides for references of disputes to tribunals constituted u/s 7. The argument of Mr. N.C. Chatterjee on behalf of the Appellants was that this order of Government was nothing more than the constitution of a tribunal u/s 7. Before any effective steps could be taken, a further order was necessary referring the dispute to the tribunal so constituted.

16. In my judgment, the Government order, to which I have made reference, is a composite order made both u/s 7 and Section 10. A tribunal is constituted to adjudicate upon a particular industrial dispute and the order actually fixes the time and place for the first sitting of the tribunal. It seems to me clear from the order that the tribunal created is directed to adjudicate upon this particular dispute. There is, therefore, in the order, a reference of the dispute to the tribunal as required by Section 10 of the Act. This was the view of Sen J. and I respectfully agree with it.

17. It was then argued that if the Government order was an order of reference, it was bad on the ground of vagueness. Admittedly, the order gives no details of the dispute. But I can find nothing in the statute which requires details of the dispute to be given when an order of reference is made u/s 10. It must be remembered that this order was made by the Government suo moto. No application had been made to Government by the party and therefore, it would be impossible for Government to give any details of the dispute. Indeed, it would be highly dangerous to issue an order u/s 10 containing details of a dispute, of which the Government would know very little. In my judgment, it cannot possibly be said that this order is void on the ground of vagueness. It seems to me that

Section 10 of the Act clearly intends that the dispute as a whole should be referred and that the arbitrator with the assistance of the parties should later clarify the issues and ascertain on what points the parties are actually in conflict. I can see no ground for holding that the order is bad as being too vague.

18. It was then contended that there was no industrial dispute in this case. An industrial dispute is defined in Section 2(k) of the Act and is in these terms:

"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.

19. The contention of the Respondents is that there now exists no dispute between them and their employees or workmen. The Appellants concede that there had been a dispute, but that, it is said, resulted in the dismissal of the workmen concerned. They Were, therefore, no longer workmen and therefore, could have no dispute with their employers which would fall within the purview of this Act.

20. In my judgment, the industrial dispute existing in this case is not a dispute between the employers, Messrs. Birla Brothers and their dismissed workmen, but rather a dispute between Messrs. Birla Brothers and all their present employees who are members of the Respondent union. The workmen deny the employers' right to dismiss employees, merely because they are trade unionists or because they took a prominent part in the formation of a union.

21. Mr. Chatterjee argued that there was nothing illegal in Messrs. Birla Brothers dismissing these workmen on giving them the statutory notice. There is of course nothing illegal in such dismissal, but trade unions have always contended and I presume always will contend that no employer is entitled to dismiss employees merely because of their activities in connection with the union which trade unions call--victimisation.

22. The dismissal of these workmen in the autumn of 1946 and the transfer of the workman in 1947 were undoubtedly the main causes of the dispute, but, as I have said, the dispute is with the whole body of workmen and not only with the workmen who were actually dismissed. That being so, it appears to me quite clear that there is an industrial dispute between the Appellants and Respondent No. 2 as representing the workmen. Therefore, there is no force in this contention put forward by the Appellants.

23. Further, it is to be remembered that the members of the union at the general meeting which took place on February 8, 1947, formulated a charter of demands as the document was called. These demands are still insisted upon by the union and have not been conceded by the employer. This undoubtedly constitutes another ground for an industrial dispute between the union member and the Appellants.

24. Sen J. was of opinion that, even if the dispute be regarded as a dispute between the employers and the dismissed workmen, it was nevertheless an industrial dispute by reason of the definition of "workman" contained in Section 2(s) of the Act. That definition is in these terms:

"Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military, or air service of the Crown.

25. It will be seen that the term "workman" in the Act includes workmen dismissed during a dispute, and therefore, Sen J.'s view may well be right. However, it might be argued that, as these workmen were dismissed before the Act came into force, they could not be regarded as workmen as that term is used in the Act. It is unnecessary to express any definite opinion upon this point, as for the reasons I have given I am clear that there existed an industrial dispute between the Appellants and their employees, as represented by the union, which could be made the subject matter of an arbitration.

26. Mr. Chatterjee then argued that, in any event, even if there was an industrial dispute, such was outside the purview of the Act, as it was a dispute which had originated before the Act came into force. It was urged that, if the Act was applied to the present dispute, it would amount to giving retrospective effect to the Act. It must at once be conceded that no Court should give retrospective effect to any Act, unless by its terms the Act was clearly intended to have such effect or such effect must be given by necessary implication or intendment.

27. In my judgment, the Act of 1947 clearly applies to the present dispute without any question arising of giving the Act any retrospective effect. It is true the dispute arose before the Act was passed, but on April 1, 1947, when the Act came into force, the dispute was in existence and continuing. The employees were on strike and the strike actually continued until May 19, that is, five days after the Government made the order referring the dispute to arbitration. In my judgment, the Act must apply to any dispute existing after it came into force, no matter when that dispute commenced. There is nothing in the Act to suggest that it should apply only to disputes which originated after the passing of the Act. On the contrary, the opening words of Section 10 of the Act make it clear that the Act would apply to all disputes existing when it came into force. The opening words of Section 10(2) are:

If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing, etc.

28. It seems to me that these words make it abundantly clear that the Act applies to any industrial dispute existing when it came into force and therefore, the Act applies to this dispute.

29. It was argued before Sen J. that Birla Brothers were not employers within the meaning of the term as used in this Act. Reliance was placed on Section 2(g), which, it was argued, contained an exhaustive definition of the term employer. Section 2(g) merely states who is to be regarded as the employer if an industry is carried on by a department of Government or a local authority. The section in no way defines the term "employer" generally and as there is no definition of that term in the Act, it must be given its ordinary or dictionary meaning. There can be no question whatsoever that Messrs. Birla Brothers are employers if that term is given its ordinary or dictionary meaning. That was the view of Sen J. and Mr. Chatterjee very wisely did not press the matter before us.

30. No other point was taken by counsel for the Appellants, but, during the course of the argument, my brother Clough raised the question whether the Government order, as amended, could validly refer to arbitration a dispute between Birla Brothers and their associated companies on the one hand and the employees of all such companies on the other. This point was never raised before. Sen J. and is not raised in the grounds of appeal to this Court., At first, the point appeared to be one of substance, but the facts make it clear that there is really no force in it.

31. As I have stated, the order of Government was amended with a view to making all the companies, in which Messrs. Birla Brothers were interested, parties to the dispute. The amended order is in these terms:

Corrigendum.

In this Department Order No. 49 Lab., dated May, 14, 1947, issued under the Industrial Disputes Act, 1947 (XIV of 1947), after the words "Messrs. Birla Brothers, Ltd.", insert "representing the establishments named in the attached list I and "allied and subsidiary concerns mentioned in list II attached."

By order of the Governor,

A.H. Quraishi,

Secy. to the Govt. of Bengal.

32. Then follows two lists--List I containing the names of twenty-eight companies and List II containing the names of thirteen companies.

33. When the amended order is read, it would appear as if Messrs, Birla Brothers, Limited, were brought into these proceedings in a representative capacity. Clearly, I think Birla Brothers could not represent the other companies named in arbitration proceedings. To constitute a valid reference to arbitration under this Act, it would be necessary to have all the interested parties before the tribunal.

34. It appears, however, that all the companies named in the two lists attached to the corrigendum were actually summoned to appear before the tribunal in the same terms as the summons sent by the arbitrator to Messrs. Birla Brothers.

Therefore, the order, though inartistically drafted, had the same effect as if all the companies were specifically named in the body of the order as parties to the dispute. It is clear that the dispute as to the dismissed workmen and the charter of demands was a dispute between all the companies named in the corrigendum and their employees and in my view, there was a valid reference of this dispute between all these companies and their employees to the arbitrator.

35. No other point was pressed in this appeal and for the reasons I have given, I would dismiss this appeal with costs. The costs will be taxed as in a suit. Certified for two Counsel.

36. Having regard to the fact that the appeal is dismissed, the application for stay must also be dismissed. No order for costs is made in the application.

Clough J.

37. Messrs, Birla Brothers, Limited, is a private company which has its registered office at No. 8, Royal Exchange Place, Calcutta: it is the managing agent of a considerable number of companies and there are in addition other companies which are allied or subsidiary to Birla Brothers, Limited, I will refer to all these companies as the Birla Group. Hindustan Motors, Limited and Ruby General Insurance Company, Limited, are two of the many companies in the Birla Group.

38. In July, 1946, two Trades Unions, Ruby General Insurance Employees Union and Birla Brothers Employees Union were formed and were registered. On September 1, 1946, they amalgamated under the name of the first mentioned union the membership of this union consists of employees of Birla Brothers, Limited, as also of employees of many of the Birla Group of companies.

39. As a matter of history, on various dates in August and September, 1946, four men, three of them employees of Hindustan Motors, Limited and one of them an employee of Ruby General Insurance Company, Limited, were dismissed by their employers and on February 6, 1947, a jamadar, an employee of Birla Brothers, Limited, "was transferred from the registered office to a mofussil office of the company. According to the union these actions were taken because of these employees" activities in connection with the union. This is, of course, disputed.

40. On February 8, 1947, at a meeting of the union a resolution was passed deploring the dismissals and the transfer, I have just mentioned and demanding the re-instatement and the re-transfer of these men. On February 12, a copy of the resolution was forwarded to Birla Brothers, Limited, with a request that the authorities communicate their decision to the Secretary of the Union by February 22. In the meanwhile, on February 14, a so-called charter of demands regarding the conditions of service of their employees is said to have been sent to the employer companies of the Birla Group.

41. The company refused to comply with the demands made and on February 17, the union gave notice to Messrs. Birla Brothers, Limited, that, in the event of a

failure to comply with its demands by 4 p.m. on February 18, there would be a strike of their employees. Copies of this notice were sent to the Labour Commissioner and to the Labour Minister.

42. This threat did not have the effect desired and on February 19, there was a strike some at any rate of the employees failed to attend their duties. On February 20, 1947, the men who absented themselves were dismissed with one month's salary in lieu of notice. The union alleges that some men were dismissed even before the strike, that is to say, between February 14 and 17; their names appear in the union's statement of their case, to which reference is made later.

43. On April 1, 1947, the Industrial Disputes Act (XIV of 1947) came into operation.

44. On May 14, the Government of Bengal in its department of Commerce, Labour and Industries made an order, the terms of which are as follows:

Whereas an industrial dispute has arisen between Messrs. Birla Brothers, Ltd., of 8, Royal Exchange, Calcutta and their employees as represented by the Birla Brothers Employees' Union of 102-B, Clive Street, Calcutta and it is expedient that the said dispute should be referred to a tribunal constituted under the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased u/s 7 of the said Act to appoint Mr. H.G. Waight, L.C.S., to be the tribunal for adjudication of the said dispute.

The tribunal should meet at a place and on a date to be notified by Mr. H.G. Waight, I.C.S.

By order of the Governor,

A.M. Quraishi,

Secy, to the Government of Bengal.

45. It is to be noticed that the order refers only to a dispute between Messrs. Birla Brothers, Limited and their employees represented by the union named. I have mentioned already that the membership of the union was in fact drawn from employees of the whole Birla Group of companies.

46. On May 19, Dr. Waight served a notice on Messrs. Birla Brothers summoning them to appear before the tribunal on May 30, 1947, to answer all material questions relating to the dispute and to produce all books and documents. This notice, which is printed at p. 17 of the paper book refers to the dispute as one between the company and some of its employees represented by the union. It is unnecessary to set it out.

47. On May 22, Birla Brothers Employees Union filed its statement before the tribunal in this it was made clear that its case was that the union represented employees not only of Birla Brothers, Limited, but also employees of many other

companies of the Birla Group and that such employees and some forty-one named companies, who were their employers, were parties to the dispute. The nature and causes of the dispute are set out in the statement: they may be summarised as alleged victimization of employees on account of their union activities and refusal to respond favourably to the charter of demands regarding the employees' conditions of service. On June 2, the Government of Bengal made an order which is headed "corrigendum" by which an alteration was made in the departmental order, dated May 14, 1947. What was done was to amend the first order by inserting after "Messrs Birla Brothers, Limited," the words representing the establishments named in the attached List I and allied and subsidiary concerns mentioned in List II attached. These two lists set out the names of some forty-one companies of the Birla Group--List I containing names of Birla Brothers, Limited and twenty-seven other companies, of which Birla Brothers is the managing agent, List II containing names of thirteen allied or subsidiary concerns. The order is very inartistic; but undoubtedly what was intended and what has I think, in fact been effected is to bring in all these companies as parties to the dispute. The companies other than Messrs. Birla Brothers, Limited, are not parties before us and in the circumstances this observation of mine is not binding on them.

48. On June 10, Birla Brothers, Limited, filed their statement before the tribunal under protest and without prejudice and on June 26, a petition was presented on behalf of the company, in which the reliefs asked for were an order requiring Dr. Waight not to adjudicate upon any alleged industrial dispute between the company and the union such as was mentioned in the statements of case, an order upon Dr. Waight prohibiting him from exercising any jurisdiction in respect of any alleged industrial dispute between the company and any of its workers and employers, writs of certiorari and/or prohibition to quash the proceedings which had commenced and an order u/s 45 of the Specific Relief Act; consequential injunctions on the union and on Dr. Waight were also asked for.

49. On June 26, Edgley J. granted a Rule; thereafter affidavits were completed and the matter came on before Sen J., for final disposal. On September 4, 1947, Sen J. delivered judgment and discharged the Rule. This appeal is from that decision.

50. It has been argued on behalf of the Appellant that Government's orders, which I have referred to, amount to nothing more than orders constituting an industrial tribunal and that there has not in this case been any reference of any dispute to a tribunal for adjudication. The material parts of the relevant sections of the Industrial Disputes Act are as follows:

Section 7. (1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act.

(2) A Tribunal shall consist of such number of members as the appropriate

Government thinks fit.

51. Then follow other provisions regarding constitution and qualification to which it is not necessary to refer.

52. Section 10(1) is as follows:

If an industrial dispute exists or is apprehended, the appropriate Government may, 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 to a Tribunal for adjudication.

53. Then follow certain provisions which need not be set out. Section 10(2) is as follows--

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 or Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

54. It seems to me to be quite clear that the orders which have been made by Government in this case are not orders only u/s 7, but are combined orders under Sections 7 and 10 of the Act. It is true that Section 7 and only Section 7 is specifically mentioned in the order dated May 14, but that is not conclusive. Orders either of appointment or of reference may be good orders whether or not the relevant section is referred to in either case and there is no doubt that there is nothing to prevent the making of a combined order of appointment of a tribunal and of reference of a dispute to the tribunal appointed. In each case, the order must be looked at for its scope and nature and the mention of one section only, for example Section 7 as in this case, is not conclusive on the question of construction.

55. In terms, Section 7 of the Act makes provision generally for the appointment of one or more tribunals for the adjudication of industrial disputes. That has not been done in this case. By the order of May. 14, a tribunal was appointed ad hoc, that is to say, to adjudicate upon a particular dispute alleged to have arisen between the parties mentioned in the order and a direction was given that the tribunal shall meet at the time and place notified by it. It seems to me quite clear that an, order in this form contains both an appointment of a tribunal and a reference of a dispute to the tribunal which is appointed. Nothing more remains to be done and nothing more need be said to effect a reference of the dispute to the tribunal for adjudication.

56. The order is in Form B which is referred to in Rule 5(1) of the Bengal Industrial Disputes Rules and is appended to those rules. It is true that the rule

refers to such an order as an order constituting a tribunal. But that is not conclusive and it is notable and I think significant that there is no separate rule or from dealing with reference of a dispute to the tribunal for adjudication. It seems to me very clear that the reason for this is that an order in the form prescribed is an order which both constitutes the tribunal and refers the dispute mentioned in it to the tribunal for adjudication.

57. It was next argued that, if the order purported to be an order of reference, it was a bad order in as much as particulars of the dispute which is said to be referred have not been given. It seems to me that there is no warrant for such an argument. There must in fact be a dispute in existence for the reference to be good reference, but the section does not require that Government, when it refers the dispute, shall particularise what the dispute is. Government may do this, but need not. It has been urged that the Central Government does in fact do this and certain instances have been given they are to be found in Part II of the paper-book. No doubt it can be done and when parties are agreed and a reference is made u/s 10(2) of the Act, it may be a convenient course. But particularisation of the dispute is, in my opinion, by no means an essential feature of a reference and in most cases it would be quite impracticable for it to be done; for the reference will ordinarily be made by Government either suo motu or on the representation of one party only to the dispute and in such circumstances, it is quite unreasonable to expect Government when it makes the reference to commit itself to a statement of the points in dispute. From Government's point of view, it is quite enough that there is a dispute in existence which if not settled or adjudicated upon, may result in an industrial stoppage with all the consequences which may follow such an event. What Government is entitled to do is to refer the dispute, whatever the dispute may be and leave it to the tribunal to discover just exactly what is comprised in the dispute.

58. The last point made on behalf of the Appellant was that, if Government's order purported to be an order of reference, then there was no dispute in existence at the time the order was made. In consequence, it was a bad order. It is argued that such disputes as there were, were in existence only before April 1, the date when the Act came into existence but on and after that date there were no disputes in being and that, in the circumstances, to allow the disputes to be referred would be to give the Act retrospective effect. It is suggested that the only persons, who had any dispute with their employer company, were those who have since been dismissed and that, with their dismissal, all disputes came to an end. The head jamadar of Messrs. Birla Brothers, Limited, who as already mentioned was transferred from the head office to a mofussil branch is an exception in the sense that he has not been dismissed--but he, it is said, is no longer discontented--he has accepted his orders of transfer with good grace and has no grievance against his employer.

59. That, in my view, is not the right way of looking at the case. It is true that the dispute originated before the date when the Industrial Disputes Act came

into force; but it was still a live dispute on April 1 and also on the date when the orders of appointment and of reference were made. The union's demands had not been complied with and they had not been withdrawn. The circumstance that the strike when it came was only a partial strike and that the employees who absented themselves were dismissed and that the strike was not persisted in or was called off, do not by any means establish that the dispute was dead. A "strike is not an essential feature to the existence of a dispute. The materials which we have and in particular the statement of its case furnished by the union before the tribunal show that there was a dispute capable of being referred.

60. All the members of the union who support their union's action and not only the dismissed or transferred men, are parties to the dispute. The phrase "Industrial Dispute" is defined in the Act: it 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.

61. The subject of a particular industrial dispute may well be confined to such matters as the employment or non-employment or terms of employment of persons who are not themselves parties to the dispute at air. An industrial dispute is, therefore, not by any means necessarily concluded when an employer, by some action, settles with or removes the discontent of a particular employee, whose grievance was the first cause of the dispute. Other employers may take up the case and insist that the particular course of conciliation adopted is not appropriate or is not enough. They may make it a matter of principle and experience shows that they frequently do. If they do there is a very real industrial dispute in being, however contented the particular person originally aggrieved may himself feel as a result of events which have happened. Even the fact that a particular person is employed at all, may, if it is distasteful to other employees, be the subject of an industrial dispute.

62. Mr. Chatterjee, appearing for Messrs. Birla Brothers, Limited, has not pressed before us a point which he argued before Sen J., namely, that it follows from the definition of "employer" given in Section 2(g) of the Act that none of the contending parties are "employers" as defined in the Act and that, therefore, the dispute is not one to which the Act refers. In my opinion, Sen J. has disposed of this argument very effectually and nothing need be added to what he has said on the subject.

63. One last matter may be referred to very shortly. It arises out of the terms of Government's order dated June 2, 1947, by which the order dated May 14, 1947, was amended. It is clear I think that what may be referred under the Act is a dispute which can be effectively adjudicated upon and it is not, in the circumstances, ordinarily possible to refer, for example, a dispute between an employer and his employees in such a manner as to bring in third parties--that is to say, some other persons, who are employees of persons, who are not parties

to the reference. What was referred originally by the order dated May 14, was a dispute between Messrs. Birla Brothers, Limited and its own employees as represented by the union. The union made it clear that it wished to bring into the reference the other companies of the Birla Group mentioned in its statement filed before the tribunal; for according to the union its membership included employees of these other companies and there was one comprehensive dispute between its members and the employer companies. It urged in its statement that all of them should be summoned to appear in the proceedings as parties to the dispute. The order as amended purported to refer a dispute which had arisen between Messrs Birla Brothers, Limited, representing the Birla Group of forty-one companies mentioned in the lists attached to it and their employees as represented by the Birla Brothers Employees Union. It is not permissible to require Birla Brothers to litigate before the tribunal an industrial dispute on behalf of others in a representative capacity, even if those other companies are connected with or subsidiary to Messrs; Birla Brothers, Limited. But there is no bar to the making of one reference, when the dispute is, as in this case, between the employees of an associated group of companies and their employees, who are all members of one union and who are acting in concert and who have together raised one dispute or series of disputes with their employers. As I have said before, the phrasing of Government's orders is very inartistic, but, in my view, the true effect is not to make Birla Brothers, Limited, represent other employers, but to refer for adjudication the dispute which their employees acting in concert have raised with their employers, that is to say, the various companies of the Birla Group. We have been told that all these various companies have been served with notices as parties to the dispute and to the reference. In the circumstances, it would be captious to found an argument on the words used in the order. This is very probably the reason why no point was made of it in the grounds of appeal.

64. Mr. Niren De, appearing for the union, has stated before us that he does not wish to take the objection u/s 37 of the Act, which he argued before Sen J. In the circumstances, it is not necessary to refer to this question.

65. For the foregoing reasons I respectfully agree that Sen J.'s decision that the Rule must be discharged was correct and that the appeal must be dismissed with costs.