

(1981) 03 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 3618 of 1978

C. Manuel

APPELLANT

Vs

Management of Needle Industries (India) Ltd. Keeti, Nilgiris
and Another

RESPONDENT

Date of Decision : 05-03-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12, 12(5), 2
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 24

Citation : (1981) 2 LLJ 102

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

1. In the present Writ Petition, the petitioner challenges the award dated 2-7-1977 passed by the Presiding Officer, Labour Court, Coimbatore,

the 2nd respondent herein, in I.D. No. 44 of 1977, Certain admitted facts have got to be kept in mind to adjudicate upon the question raised in this

writ petition. The petitioner, herein after referred to as ""the workman"" was employed by the 1st respondent herein hereinafter referred to as ""the

management.

2. In May, 1973, there were certain disciplinary proceedings initiated by the management against the workman and ultimately in August, 1973, the

workman was exonerated of the charges levelled against him by the management. The workman, through his union, is stated to have demanded

employment. In the present writ proceedings, we are not very much concerned with these happenings. On 1-10-1973 the management terminated

the services of the workman relying upon the terms and conditions of the appointment in that workman failed to attend duty continuously for 199

days from 16th March, 1973. On 3-11-1975 the workman, along with other workmen concerned, through their union, made an application to the

Labour Officer, Coonoor complaining that the management refused employment to the said workmen without assigning proper reason and without

proper enquiry and demanded the reinstatement with back wages and continuity of service. This application was forwarded by the Labour Officer.

Coonoor, on 29-11-1975 to the management and the management, by their letter dated 9-2-1976, addressed to the Labour Officer, Coonoor,

declined to accede to the request of these workman for reinstatement with back wages and with regard to the present workman, the management

referred to the order of termination issued on 1-10-1973 and stated that the workman did not raise any dispute for more than two years and in

view of the delay and laches, they are unable to recognise the existence of a dispute. Admittedly, conciliation was prosecuted before the Labour

Officer and the Labour Officer submitted his failure report with regard to the present workman on 30-11-1976 to the State Government. The

State Government by G.O.R. No. 458 Labour and Employment, dated 28-2-1977 referred the dispute to the 2nd respondent, which was taken

up for adjudication in I.D. No. 44 of 1977. The points of reference are as follows :

(1) Whether the non-employment of Thiru C. Manuel is justified, if not, to what relief he would be entitled ?

(2) To compute the relief, if any, awarded in terms of money, if it could be so computed.

The 2nd respondent did not go into the merits of the case but was content to adjudicate the matter on a preliminary point raised by the

management that the reference u/s 10(1) of the Industrial Disputes Act, hereinafter referred to as "the Act" is not competent in law in view of

absence of any specific demand by the workman on the management for reinstatement. It is not claimed by the workman that immediately on

receipt of the order of termination dated 1-10-1973 he made any direct demand on the management for reinstating him. After analysing the

materials from this point of view, the 2nd respondent came to the conclusion that at no stage prior to the present reference there was any demand

made by the workman on the management for reinstatement and in the absence of such a demand on the management it must be held that there is

no valid industrial dispute between the workman and the management and hence the reference purporting to be one under S. 10(1) of the Act must be deemed to be incompetent and passed an award to that effect.

That the workman, through his union, agitated for reinstatement, though belatedly, by making an application before the Labour Officer, Cooner is

no denied. Equally, so that the management was not prepared to accede to the request of the workman is not in controversy. This led to the

conciliation by the Labour Officer, Coonoor and the conciliation ended in failure and that obliged the Labour Officer, Coonoor, to send the failure

report. On the basis of the failure report from the Labour Officer, Coonoor the State Government opined that there existed at that relevant point of

time, an Industrial dispute between the workman and the management, and this obliged the State Government to make the order of reference

under S. 10(1) of the Act.

3. Mr. A. L. Somayaji, the learned counsel for the workman, would submit that there is no prohibition for the workman to raise the demand

through the Conciliation Officer had when the demand has been refused by the management which was followed by the prosecution of conciliation

which ended in failure, that provided ample materials at the relevant point of time for the State Government to form its opinion as to the existence

of an industrial dispute and the order of reference cannot be struck down as incompetent on a presumption that there was no industrial dispute in

existence. The learned counsel for the workman would submit that the 2nd respondent is not correct in law in insisting that there should have been

a direct demand on the management by the workman and denial of the same by the management ignoring the fact that the parties were in fact in

direct confrontation with each other before the Labour Officer and conciliation failed indicating beyond doubt the dispute has arisen and existed at

the relevant point of time.

4. As against this submission Mr. T. Dulip Singh, learned counsel appearing for the management, would state that unless there has been a direct

demand by the workman on the management and a denial of the same by the management before the very initiation of the conciliation proceedings,

the mere fact that the parties participated in the conciliation before the Labour Officer and the said conciliation ended in failure is not sufficient to

clothe the State Government with the jurisdiction to refer the matter as an industrial dispute under S. 10(1) of the Act. In this view of the matter, the learned counsel for the management would submit that in the instant case there was admittedly no demand by the workman on the management earlier to participation in conciliation proceedings and the reference under S. 10(1) of the Act by the State Government has been rightly held to be incompetent by the Labour Court.

5. The question that is being raised in the present writ proceedings is interesting indeed and is not beyond controversy. The question has been raised in this manner. It is contended on behalf of the management that there should be a demand directly made by the workman or on his behalf on the management and such a demand must have been refused by the management and this demand and refusal which alone will constitute an industrial dispute must proceed any proceedings before the conciliation officer. The argument advanced by the learned counsel for the management seems to suggest that before there could be a reference by the appropriate Government under S. 10 of the Act, an industrial dispute must have arisen in a modulated way and that modulation must start with the direct demand by the workman or on his behalf on the management and the refusal of such a demand by the management which must be followed by initiation of conciliation proceedings before the conciliation officer; if the conciliation officer, after the attempt at conciliation, finds that no settlement is arrived at between the management and the workman, must send a report to the appropriate Government, and on a consideration of the report if the appropriate Government is satisfied that there is a case for reference, then it may make such reference. The argument further seems to suggest that every reference by the appropriate Government must have been preceded by a demand by the workman and refusal by the management which alone would constitute an industrial dispute and such a demand And refusal should have occurred even prior to the initiation of the conciliation before the conciliation officer. To the question put by the Court as to whether conciliation should always precede reference by the appropriate Government under S. 10 of the Act, learned counsel appearing for the management could not express any categorical view. The solution to this controversy is not easy to find in view of certain

pronouncement of the Supreme Court as well as of High Courts including this Court. But the ultimate analysis leaves no room for doubt that to

constitute an industrial dispute for the purpose of getting it referred by the appropriate Government under S. 10 of the Act, the decisions recognise

the proposition that there must be a demand by the workman on the management a refusal of the same by the management. But as to whether such

a demand and refusal must precede the very initiation of conciliation proceedings, so as to exclude the possibility of a demand being raised on the

management through the conciliation officer himself and the same being denied by the management, which would necessitate the prosecution of

conciliation proceedings, the judicial pronouncements are not clear and categoric on this aspect.

6. For a proper assessment and appraisal of the legal position in the light of the available judicial precedents, it becomes incumbent for me to refer

to some of the relevant provisions of the Act itself.

7. Section 2(k) defines industrial dispute in the following terms :

Industrial dispute"" means any dispute or difference between employers, and employees, or between employers and workmen, or between

workmen and workmen which is connected with the employment or the terms of employment or with the conditions of labour of any person.

S. 10 of the Act deals with reference of disputes to Boards, Courts or Tribunals. Sub-section (1) and the proviso thereof run as follows :

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 be a Labour Court for adjudication;

(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 under 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.

8. Section 12 deals with duties of Conciliation Officers and the entire section runs as follows;

(1) where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a

notice under S. 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters

affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a

fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer

shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a

memorandum of the settlement signed by the parties to the dispute.

4. If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate

Government full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing

about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a

settlement could not be arrived at.

5. If on a consideration of the report referred to in sub-s. (4), the appropriate Government is satisfied that there is a case for reference to a Board,

Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it

shall record and communicate to the parties concerned its reasons therefor.

6. A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

9. Section 20 deals with commencement and conclusion of proceedings Sub-Sections 1 and 2 are relevant and they run as follows :

(1) A conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lock-out under S. 22 received by

the conciliation officer or in the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded.

a) Where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

b) Where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under S. 17 as the case may be : or

c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under S. 10 during the pendency of conclusion proceedings"".

It will be pertinent to refer to Rule 24 of the Tamil Nadu Industrial Disputes Rules, 1958, and it is extracted as follows :

The party representing workmen involved or the workman or workmen concerned in an industrial dispute in respect of which no notice has been

given under Rule 59 shall forward to the conciliation officer concerned before such date as may be specified by him for commencing the

conciliation proceedings a statement in duplicate setting forth/-

a) the parties to the dispute;

b) the nature and cause of the dispute including any demands made by either party on the other to which exception is taken by the opposite party :

c) an estimate of the number of persons affected or likely to be affected by the dispute; and

d) the efforts made by the parties themselves to settle the dispute.

A copy of the statement shall also be furnished simultaneously by registered post to the employer. Within seven days from the date of receipt of the

statement, the employer may file his reply statement before the conciliation officer.

10. A pronouncement of the Supreme Court on this question is found expressed by a Bench consisting of three learned Judges in *Sindu*

resettlement Corporation v. Industrial Tribunal, 1968 L.L.J. 834. There, the demand by the workman was only for retrenchment compensation

and there was no demand for reinstatement as found by the Supreme Court. The Supreme Court further found that the demand for reinstatement

seemed to have been given up. Of course, there were some conciliation proceedings and subsequently on the report of the conciliation officer, the

Government of the State of Gujarat referred the question of reinstatement of the workman for adjudication by the Industrial Tribunal. In the claims

put forward before the management, the request was for payment of retrenchment compensation and no dispute of reinstatement was raised. In

those circumstances, the Supreme Court held that since no such dispute about the reinstatement was raised before the management, the State

Government was not competent to refer the question of reinstatement as an industrial dispute for adjudication by the Tribunal. The following

observations at pages 839 of the Reports bring out succinctly the opinion expressed by the Supreme Court and the circumstances under which it

was expressed :

It may be that the conciliation officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No.

3 and payment of wages to him from 21st February, 1958, but when the dispute came up for adjudication before the Tribunal, the evidence

produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no dispute at all

was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an

industrial dispute between them. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen,

and workmen and workmen. A mere demand to a Government without a dispute being raised by the workmen with their employer cannot become

an industrial dispute. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the Tribunal had ever existed between the appellant-Corpn. and the respondents and the State Government in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist and that opinion could only formed on the basis that there was a dispute between the appellant and the respondents relating to reinstatement. Such material could not possibly exist when, as early as March and July, 1958, respondent No. 3 and respondent No. 2 respectively had confined their demands to the management to retrenchment compensation only and did not make any demand for reinstatement. On these facts, it is clear that the reference made by the Government was not competent. The only reference that the Government could have made had to be related to payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the respondents.

11. In Shambu Nath Goyal Vs. Bank of Baroda, , a smaller bench consisting of two learned Judges of the Supreme Court held as follows :

The Act no where contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non unless of cause, in the case of public utility service, because S. 22 forbids going on strike without giving a strike notice.

12. As to what would connote an industrial dispute, the following observations of the Supreme Court in the said decision are also elucidative :

Thus the term industrial dispute connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount of rewriting the section.

That there was in fact a demand for reinstatement in that case is brought out by the following appraisal of the facts by the Supreme Court :

In this case the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after

dismissal. When the inquiry was held, it an admitted position, that the workman appeared and claimed reinstatement. After his dismissal he

preferred an appeal to the appellate forum and contended that the order of dismissal was wrong, unsupported by evidence and in any event he

should be reinstated in service.

It that was not a demand for reinstatement addressed to employer what else would be convey ? That appeal itself is a representation questioning

the decision of the management dismissing the workman from service and praying for reinstatement. There is a further fact that when the union

approached the conciliation officer the management appeared and contended the claim for reinstatement. There is the thus unimpeachable evidence

that the concerned workman persistently demanded reinstatement. If in this background the Government came to the conclusion that there exists a

dispute concerning workman S. N. Goyal and it was an industrial dispute because there was demand for reinstatement and reference was not such

reference could hardly be rejected on the ground that there was no demands and the industrial dispute did not come into existence. Therefore, the

Tribunal was in error in rejecting the reference on the ground that the reference was incompetent.

13. In this decision, the case of The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, , was referred to and

it was observed that the question whether in case of an apprehended dispute Government can make reference under S. 10(1) of the Act was not

examined by the earlier decision. In this context, the following observations cannot also be lost sight of :

The power conferred S. 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is

also apprehend. From the material placed before the Government reaches an administrative decision whether there exists an industrial dispute or an

industrial dispute is apprehended and in either event it can exercise its power under S. 10(1).

14. The very same two learned Judges of the Supreme Court who constituted the Bench in *Shambu Nath Goyal v., Bank of Baroda*, 1978 I L.L.J.

1 had occasion to deal with the scope of S. 10(1) of the Act in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and*

Others, . They referred to the pronouncement of *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, and

observed as follows :

The decision turns purely on the facts of the case. In the case before us the union complained about illegal termination of service and demanded

reinstatement with back wages. The Government subsequently made a reference about the validity of the retrenchment and the relief to which the

workmen would be entitled. It is thus crystal clear that there was a demand about reinstatement complaining about the illegality of termination of

service and the same has been referred to the Tribunal. Therefore, it is not possible to accept the contention that on this account the reference is

incompetent. In this view of the matter it is not necessary to examine the contention raised on behalf of the respondents that the decision in *Sindhu*

Resettlement Corporation Ltd. (Supra) ignores or omits to take note of the expression ""difference"" used in the definition of industrial dispute in S.

2(k) as also the power of the Government not only to refer a dispute which exists but one which is apprehended in the sense which is imminent or

is likely to arise in future and which, in order to arrest in advance threatened or likely disturbance to Industrial peace and harmony and a threat

to production has to be referred to the industrial Tribunal for adjudication.

15. In *Fedders Lloyd Corporation Pvt. Ltd. Vs. Lt. Governor, Delhi and Others*, a Bench of the Delhi High Court found on facts that there was no

demand made by the workman on the management before the made an application under S. 10(2) for reference and in that event that fact that the

demand of the workman was forwarded by the conciliation officer to the management and was not accepted by the management would not

constitute an industrial dispute. It must be remembered that S. 10(2) of the Act contemplates parties to industrial disputes applying in the

prescribed manner, whether jointly or separately for a reference of a dispute to a Board, Court, etc., and the appropriate Government making a

reference under that provision. The Bench of the Delhi High Court has chosen to

follow the ratio of the Supreme Court in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, .

16. In *Delhi Transport Corporation Vs. Delhi Administration and Others*, z, Deshpande, J., of the High Court (Delhi) dealt with a case where the workman who was terminated from service took no steps against it till the conciliation proceedings; in the conciliation proceedings the workman did not say that he had asked the employer to reinstate him and that the employer had refused to do so; from the beginning till very late the union and the workman never stated anything about the demand having been made on the employer and under those circumstance, since no demand was made by the workman on the employer prior to conciliation and the reference, the learned Judge held that the impugned order of reference by the Government was not based on the relevant material and, therefore, the reference was incompetent and consequently the Labour Court acted *coram non judis* and all the proceedings before the Labour Court were without jurisdiction. Here again the single Judge of Delhi High Court has referred to the decision of the Supreme Court in *Sindhu Resettlement Corporation v. Industrial Tribunal*. (Supra).

17. In *New Delhi Tailoring Mazdoor Union v. S. C. Sharma & Co.* 1979 (39) Indian Factories & Labour Reports 195 Leila Seth, J. of the Delhi High Court had occasion to refer to the two judgment of the Supreme Court, one in *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, and the other in *Shambu Nath Goyal Vs. Bank of Baroda*, and on the facts of the case dealt with by her, the learned Judge held that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute and in that case, the demand had been confined to retrenchment compensation and no demand had been made with regard to reinstatement and hence the reference was held to be incompetent.

18. So far as this Court is concerned, three pronouncements have been referred before me. One is that of Rampradasa Rao, J., as he then was in *Dhanapal Bus Service (P) Limited Vs. K.R. Venkatesan and Others*, . Before the learned Judge it was contended that there was no demand raised by the workers against the management in the usual manner and, therefore, the reference itself was initially bad. The learned Judge pointed

out that it was too late in the day for the management to take up this contention and even otherwise, factually it was seen that there were

conciliation proceedings before the Labour Officer which failed and consequent upon such failure a reference was directed by the State Government

under the appropriate section of the Act and hence the learned Judge did not see any error of law or erroneous exercise of jurisdiction in the

award challenged.

19. In *W.S. Insulators of India Ltd. Vs. Industrial Tribunal and Others*, Mohan, J. referred to the position that it is well settled in law that unless

there is a demand and that demand is not complied with, there cannot be any industrial dispute within the meaning of S. 2(k) of the Act. The

learned Judge did not countenance the view of the Tribunal there that the participation of the management in the conciliation proceedings would be

sufficient. However, on the facts of that case, the learned Judge held that there was a demand leading to a dispute.

20. It must be noted that in the above two pronouncements by the two learned Judges of this Court, there had been no reference to the

pronouncements of the Supreme Court in *Sindhu Resettlement Corporation v. Industrial Tribunal*, 1968 I L.L.J. 3834.

21. Mohan, J. in *G. Srinivasan, v. The Presiding Officer, Additional Labour Court, Madras and another*, [W.P. No. 3695 of 1978] judgment

dated [19-11-1979] had occasion to refer to the two judgments of the Supreme Court one in *The Sindhu Resettlement Corporation Ltd. Vs. The*

Industrial Tribunal of Gujarat and Others, and the other in *Shambu Nath Goyal Vs. Bank of Baroda*, and held that it is a fundamental postulate of

law only if there is a demand on the management by the workman and if that demand is rejected there should be a reference and in the absence of

such a demand, there cannot be a reference. The learned Judge further opined that this fundamental postulate has not been in any way whittled

down or diluted by the observations of the Supreme Court in *Shambu Nath Goyal v. Bank of Baroda* (supra). In the case dealt with by the learned

Judge the finding of the Labour Court was that there was no demand for reinstatement and the contention that there was an oral demand was not

accepted and on that score the claim for reinstatement was rejected.

22. We can take it as settled that a dispute could arise within the meaning of S.

2(k) of the Act only when there is a demand by the workman and a denial of the same by the management. The definition of dispute under S. 2(k) of the Act takes in difference between the parties also. It is one thing to say that there must exist a dispute or a difference so as to clothe the appropriate Government with the jurisdiction to refer the matter for adjudication under S. 10 of the Act and it is another thing to say as to how the dispute or difference must have arisen and existed or apprehended at the relevant point of time. Neither the statute law nor any of the judicial pronouncements referred to above, lay down that a demand could not be made through the conciliation officer and a denial of the same could not be expressed before the conciliation officer. Section 20 of the Act which has been extracted above speaks about commencement of conciliation proceedings with reference to notice of strike or lock-out under S. 22 of the Act or where there is an order referring the dispute to a Board. The definition of conciliation proceedings is found in S. 2(e) of the Act and it runs as follows :

Conciliation proceeding"" means any proceedings held by a conciliation officer or Board under this Act;

It is not of much help apart from conveying that it will refer to only proceedings held by a conciliation officer or Board under the Act. The chances of workman or workmen raising a demand on the management through the conciliation officer cannot be said to have been completely ruled out or prohibited by the provisions of the Act, Nothing need prevent the Conciliation officer on the receipt of the demand by the workman or workmen or the union, from forwarding the same to the management and obtaining its reaction and if the reaction is negative, then to commence the conciliation because by the demand and the refusal of the same, a difference must be deemed to have arisen between the parties.

23. It may not be always necessary that conciliation should be resorted to under S. 12 of the Act and the report of the conciliation officer should be there for the appropriate Government to exercise the power of reference under S. 10 of the Act. Even without resort to conciliation proceedings, the reference of an industrial dispute existing or apprehended, under S. 10 of the Act is proper. If this is remembered, then, the relevant point of time to find out as to whether there exists an industrial dispute

or an industrial dispute is apprehended is the time at which the appropriate government forms the opinion for the purpose of reference under S. 10 of the Act. If the proceedings before the conciliation officer and his failure report have preceded the action under S. 10 of the Act, they clinch the issue in that there cannot be any doubt that they evidence the existence and continuation of an industrial dispute at the time the appropriate Government forms the opinion for the purpose of reference under S. 10 of the Act. The materials for the appropriate Government for the formation of the requisite opinion could be found in the failure report of the conciliation officer. If the matter got agitated before the conciliation officer and has terminated before him in the form of a failure report, nothing more need be insisted upon to indicate that an industrial dispute exists to enable the Government the act under S. 10 of the Act. At that relevant point of time the question of demand and refusal must be deemed to have lost its significance, because the very fact that the parties agitated the matter before conciliation officer and continued to remain at loggerheads is indicative of the position that the difference between them continues and exists at the relevant point of time for reference u/s 10 of the Act. In this connection it is worthwhile to remember that the dictum of the Supreme Court in State of Madras Vs. C.P. Sarathy and Another, where a Bench consisting of five learned Judges of the Supreme Court held that the disputes referred to a Tribunal under S. 10(1)(c) of the Act in order that the resulting award may be binding on any particular industrial establishment and its employees need not have actually arisen between them and the learned Judges further held that the contrary view does not give effect to the words ("or is apprehended") in the section. The factum of existence of an industrial dispute or apprehension of an industrial dispute can be found even in the failure report of the conciliation officer at the time when the appropriate Government exercises the power under S. 10 of the Act.

24. The position that the validity of a reference must be judged on the facts as they stand on the date of reference has been recognized by a Bench consisting of five learned Judge of the Supreme Court in Indian Cable Co. Ltd. v. Its Workmen, 1962 L.L.J. 409. Equally so, there is no limitation on the powers of the appropriate Government to make a reference on the simple

ground that it refused to refer a dispute on a previous occasion.

This is clear from the pronouncements of the Supreme Court in *Binny Ltd. Vs. Their Workmen*, and in *Avon Services v. Industrial Tribunal 1979 I*

L.L.J. I.

25. It is now well settled that the procedure indicated in S. 12 of the Act is not condition precedent for the appropriate Government to exercise its

power under S. 10(1) of the Act. Section 12(5) of the Act does not confer, the power but it is only S. 10(1) of the Act that confers the power to

make reference. The appropriate Government need not base its decision solely on the report of the conciliation officer, but is free to take into

consideration all other relevant facts and circumstances. Section 10(1) of the Act is not controlled by S. 12(5) of the Act. The authorities are clear

on this aspect and it would suffice the purpose if only reference is made to some of them.

1. *Raju's Cafe and Others Vs. The Industrial Tribunal and Another*, .

2. *Kanti Cotton Mills Ltd. v. The State of Saurashtra*, AIR 1953 sau. 46

3) *B.N. Elias and Co. Private Ltd. and Others Vs. G.P. Mukherjee and Others*,

4) *State of Bombay v. Krishnan (K.F.)* 1960-II L.L.J. 592

5) *Good Year India Ltd. v. Industrial Tribunal*, 1968 II L.L.J. 682.

6) *Rohtas Ind. Mr. Sangh v. State of Bihar*. [1974] La. Ind. Cases 1266.

26. The principles recognized by Courts including the highest in the land have not laid down any particular manner by which an industrial dispute or

difference should be raised. The real question is whether if at the time of exercise of powers u/s 10 of the Act there exists or is apprehended an

industrial dispute or difference, then it will be competent for the appropriate Government to exercise its powers u/s 10. Once that power has been

exercised, it will be futile to go behind to some point of time anterior to the relevant point of time and explore as to whether a demand was raised in

a particular manner by the workman on the management and whether such a demand was refused by the management. The parties having come to

grips and the situation having not been eased but by any conciliation, the dispute or the difference must be deemed to have existed or apprehended

at the point at time when the appropriate Government exercises its powers under S. 10 of the Act. That is the crucial point of time. If at an earlier

point of time the appropriate Government opined that there are no grounds for reference yet, at a subsequent point of time which again becomes

relevant, it changes its opinion and finds a warrant for reference such an act, which is undoubtedly an administrative one and not a judicial or quasi

judicial one, cannot be the subject-matter of review by this Court. The only relevant factor is that an industrial dispute must exist as a fact or as

apprehended before the reference is made. The following observations of the Supreme Court in *Avon Services v. Industrial Tribunal*, 1979 I L.L.J.

I, bring out the position clearly :

Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended

to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the

dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and

requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be

exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of

which it forms its opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an

administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the

factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in

character. Thus, the jurisdictional facts on which the appropriate Government may act or the formation of an opinion that an industrial dispute

exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or

sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny.

27. Rule 24(b) of the Tamil Nadu Industrial Disputes Rules, 1958, could not be availed of by the management to advance a proposition that there

is a mandate in law that a reference by the appropriate Government must have been preceded by conciliation proceedings which again must have

been preceded by a demand made by the workman in a particular manner and denial of the same by the management. It is true that there could be

conciliation only when any industrial dispute exists or is apprehended. The rule cannot be to lay down that a demand as such cannot be raised by

the workman through the Conciliation Officer.

Rule 24 merely requires the workman or workmen involved in an industrial dispute to submit statements setting forth the details enumerated therein.

One of the details is the factum of any demand made by either party on the other to which exception has been taken by the opposite party. This

would enable the Conciliation Officer to commence conciliation proceedings. This rule contemplates that the Conciliation Officer should specify a

date for submission of statements. Hence it pre-supposes an industrial dispute as having arisen prior to the commencement of conciliation

proceedings. But it has not ruled out the raising of a demand by the workman on the management through the Conciliation Officer denial of the

same by the management followed by the same by the management followed by the commencement of conciliation proceedings. The adherence to

or departure from the said rule is not of much significance because the very conciliation proceedings are not a sine qua non for exercise of powers

under S. 10 of the Act by the appropriate government. Once the conciliation proceeding has ended in failure and that affords ample material to

indicate the existence of an industrial dispute or apprehension thereof at industrial dispute or apprehension thereof at the at relevant point of time,

then the exercise of powers by the appropriate Government under S. 10 of the Act by referring the matter for adjudication cannot be the subject-

matter of judicial review. In these circumstances, it would be futile to go behind the conciliation proceedings to find but as to whether the demand

by the workman was made in particular manner or not.

28. In *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, , there was no demand for the particular claim

of reinstatement by the workman on the management at any relevant point of time and in these circumstances, the Supreme Court was not

prepared to accept a mere demand to a Government without a dispute being raised by the workman with his employer, as constituting an industrial

dispute. That was why the Supreme Court in the later two decisions, *Shambu*

Nath Goyal Vs. Bank of Baroda, and Avon Services Production

Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, of course though a smaller Bench, expressed the view that in the earlier case, the

question as to whether the Government has the power to refer an industrial dispute on apprehension of the same was not examined. When the

views of the Delhi High court were expressed in its first two decisions, namely, Fedders Lloyd Corporation Pvt. Ltd. Vs. Lt. Governor, Delhi and

Others, and Delhi Transport Corporation Vs. Delhi Administration and Others, , the latter pronouncement of the Supreme Court had not come.

But, at the time of the decision in New Delhi Tailoring Mazdoor Union v. S. C. Sharma & Co. (1979 (39) Indian Factories and Labour Reports

195) the decision of the Supreme Court in Shambu Nath Goyal Vs. Bank of Baroda, , had come, and the learned Judge Leila Seth, J., referred to

both the cases; and held that they can be reconciled, and of course on the facts of the case dealt with by her the learned Judge found that while the

demand was for lifting a lock-out, the reference was with regard to the justifiability of termination of services, and hence it was held that the order

of reference was incompetent. The three decisions of this Court, one of Ramprasad Rao, J., as he then was, in Dhanapal Bus Service v.

Venkatesan, 1976 I L.L.J. 515 and the latter two of Mohan, J., on in W.S. Insulators of India Ltd v. Industrial Tribunal, 1976 II L.L.J. 225 and

the second in G. Srinivasan v. The Presiding Officer Additional Labour Court, Madras and another (W.P. No. 3695 1978 judgment dt. 19-11-

1979) are not of much assistance, since they do not deal with the question in controversy in the light of the latest pronouncement of the Supreme

Court but merely recognise the bare proposition that an industrial dispute could come into existence only on a demand by one party and a denial of

the same by the other. To some extent, the judgment of Ramprasad Rao, J., as he then was in Dhanapal Bus Service (P) Limited Vs. K.R.

Venkatesan and Others, , accepts the stand that where conciliation proceedings before the Labour Officer failed and consequent upon such failure,

a reference was directed by the State Government there was no error of law or erroneous exercise of jurisdiction in the award challenged.

29. Coming to the facts of the present case, there was in fact a demand by the workman, of course made through the conciliation officer on 3-11-

1975. It is true that this demand was not directly addressed to the management. But it is not as if the demand was on the conciliation officer. The demand was for reinstatement and the demand was against the management. This demand got communicated to the management through the Labour Officer. The management reacted in the negative. They declined to entertain the demand. The application dated 3-11-1975, though it contained the particulars as contemplated under Rule 24 of the Tamil Nadu Industrial Disputes, Rules, 1958, it was not a statement submitted after a date has been specified by the Labour Officer for such submission of a statement. The very provocation for the conciliation was found only in the demand set out in this application dated 3-11-1975 and the denial of the same by the management by their letter dated 9-2-1976. Conciliation was obviously prosecuted thereafter. The conciliation ended in failure. The conciliation report set forth the differences existing between the workman and the management. This afforded sufficient materials for the State Government to form the opinion for the purpose of reference under S. 10(1) of the Act of the matter as industrial dispute for adjudication, At that relevant point of time, it can never be stated that there was no industrial dispute existing or apprehended. Hence, on the facts of this case, it cannot be urged that there was no demand for reinstatement at all by the workmen and no denial of the same by the management. In any event, at the relevant point of time when the State Government formed the opinion to refer the matter for adjudication, there was in fact the existence of an industrial dispute and in any event the apprehension of the same. In those circumstances, it will not be proper to throw out the very reference as incompetent and in this view, the award of the 2nd respondent cannot be sustained. This obliges me to interfere in writ proceedings and accordingly, this writ petition is allowed and the award of the 2nd respondent will stand quashed and rule nisi made absolute and the matter will stand remitted back to the file of the 2nd respondent for it to adjudicate the matter on merits. However, there will be order as to costs in this writ petition.