
(1962) 09 AHC CK 0013
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2791 of 1957

Central Distillery and Chemical Works Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 25-09-1962

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 6
Uttar Pradesh Industrial Disputes (Miscellaneous Provisions) (Amendment) Act, 1957
— Section 16, 17, 8
Uttar Pradesh Industrial Disputes Act, 1947 — Section 15, 2, 3, 6, 6A

Citation : AIR 1964 All 156

Hon'ble Judges : Jagdish Sahai, J; B.D. Gupta, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; R.C. Verma and Snamdnu Pd., for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The petitioner, Central Distillery and chemical works Limited (hereinafter referred to as the Distillery) is a limited liability company incorporated under the Indian Companies Act. It is engaged in manufacturing power alcohol, one Sri Jagdish Prasad Sharma (hereinafter called Sharma) was employed as a turner in the Distillery. The management of the Distillery served a charge-sheet dated 9th July, 1956 on Sharma on 10th July, 1956. In that connection, an Enquiry committee, consisting of Sri S. S. Singhal, secretary of the Distillery, Sri B..N. Khanna, Chemist of the Distillery and Sri Mahendra Singh, one of the workmen of the Distillery was appointed to investigate into the charges against Sharma. on the basis of the report of the enquiry Committee, the management of the Distillery held Sharma guilty of gross misconduct and by their order dated 26th July, 1956, which was served on Sharma on 27th July, 1955, dismissed him from service. By its order dated the 18th December, 1956 the State Government referred the following dispute for adjudication by Sri K.K. Pandey, Regional Conciliation Officer who was appointed Adjudicator:

"Whether the employers have wrongfully and/or unjustifiably terminated the services of Sri Jagdish Prasad Sharma if so, to what relief is he entitled?"

The Adjudicator gave his Award and the State Government by means of notification No. 3625 (ST)/XXXVI-A-51(ST)/1956 dated October 5, 1957 enforced the Award for a period of one year with effect from 5th of October, 1957. The Distillery then filed the present petition on 31st of October, 1957. The prayer in the petition is for the issue of a writ of certiorari or order or direction in the nature of certiorari quashing the order of the State Government enforcing the Award. The matter came up before a learned Single Judge (V.D. Bhargava, JJ. who referred this case to a Division Bench.

2. We have heard Mr. S. C. Khare for the petitioner, Mr. R. C. Verma for the respondent No. 3, the Central Distillery Mazdoor Union,, and the learned Junior standing Counsel for respondents Nos. 1 and 2, the State of Uttar Pradesh and Sri K.K. Pandey, the Adjudicator respectively. The submissions that were made before the learned Single Judge, were repeated before us. They are as follows:

(1) The order of reference by the State Government was bad inasmuch as it did not contain reasons for referring the matter to the Adjudicator and not an industrial Tribunal.

(2) The Award of the Adjudicator was without jurisdiction inasmuch as he held that even though Sharma was guilty of misconduct, the punishment awarded to him was excessive.

(3) After the coming into force of the U. P. Industrial Disputes Amendment and Miscellaneous Provisions Act, 1 of 1957, there was no jurisdiction to enforce an award given by an Adjudicator.

(4) The Adjudicator was bound to pronounce the Award which he did not do with the result that the Award is invalidated.

3. No other point was urged before us.

4. We will take the submissions made by the learned counsel seriatim.

5. Coming to the first point, admittedly, the present case is governed by the order notified by the state Government dated 14th July, 1954 read with the provisions of the industrial Disputes Act, 1947 (U. P. Act No. 28 of 1947. The opening words of the notification read as follows:

"Whereas it is necessary in the opinion of the State Government so to do for securing the public safety and convenience and "the maintenance of public order and supplies and services essential to the life of the community, and for maintaining employment;

Now, therefore, the Governor of Uttar Pradesh, in exercise of the powers conferred by Clause (b), (c) and (g) of Section 3 and Sections. 6-A and 8 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. 28 of 1947), and in

supersession of Government Order No. 615(LL)/XVIII-7(LL)1951, dated March 15, 1951, is pleased to make the following Order and to direct, with reference to Section 19 of the said Pet, that notice of this Order be given by publication in the official Gazette."

6. Clause 11 of the Order reads as follows;

"11. Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time either of its own motion or after considering the report of the Conciliation Board made under Sub-clause (3) of Clause 5, or on an application made to it, by order in writing refer any dispute to the Industrial Tribunal, or if the State Government considering the nature of the dispute or the convenience of the parties so decides, to any other person specified in that behalf for adjudication (hereinafter called the Adjudicator)."

7. It is contended by the learned counsel for the petitioner that under the provisions of Clause 11 of the under, an industrial dispute court normally be referred to an Industrial Tribunal but if the State Government, considering the nature of the dispute or the convenience of the parties so decided, it could also be referred to an Adjudicator. The order of reference in the present case is in the following words:

"Government of Uttar Pradesh Labour (A) Department No. 2993 (LC)/XVIII-LA 285(MRO)/1956, Dated Kanpur, December 18, 1956.

ORDER: Whereas an industrial dispute in respect of the matter hereinafter specified exists between the concern Known as M/S Central Distillery and Chemical works, Ltd., Meerut, and its workmen and whereas in the opinion of the Governor, it is necessary so to do for the maintenance of public order and for maintaining employment;

Now, therefore, in exercise of the powers conferred by Sections 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. 28 of 1947) and in pursuance of the provisions of Clause 11 of G.O. No. U-464 (LL)/XXXVI-B-257/ (LJ)/1954, dated July 14, 1954, as amended and extended from time to time, the Governor is pleased to refer the said dispute to Sri K. K. Pandey, Regional Conciliation Officer, Meerut, who shall adjudicate on the following issue in accordance with the provisions of the aforesaid G.O. no. U-464-(LL)/XXXVI-B-257(LL)/-1954, dated July 14, 1954, as amended and extended from time to time;

MATTER OF DISPUTE

"Whether the employers have wrongfully and/or unjustifiably terminated the services of Sri Jagdish Prasad Sharma, if so, to what relief is he entitled?

SD/-O. N. Misra, I.A.S., joint Secretary."

8. It was contended by the learned counsel for the petitioner that in the absence of a recital in the referring order mentioned above that the State Government had applied its mind to the facts of the case and had thought it proper, after

considering the nature of the dispute, or considering, the convenience of the parties, to refer the matter of dispute to an Adjudicator, the order of reference is bad in law. Learned counsel placed reliance upon a Bench decision of this Court dated 22nd of April, 1957 in Special Appeal No. 376 of 1955 (All) wherein it was held that unless there is a recital in the order of reference that either on the ground of the nature of the case or convenience of the parties, the State Government referred the matter to an Adjudicator, the order of reference would be bad. The learned judges have, however, held that in the absence of there being a recital in the order of reference, affidavits could be filed or other material placed before the court to show that the Government had considered the question of the nature of the case or the convenience of the parties before making the reference. We consider that the absence of such a recital is not fatal and are fortified in our view by a decision of the Supreme Court in *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, where, while dealing with a similar submission, their Lordships observed as follows:

"The fact that in the notification which is made thereafter to publish the order, the formation of the opinion is not recited, will not take away the power to make the order which had already arisen and led to the making of the order. The validity of the order, therefore, does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence, it would therefore, follow that if by inadvertence or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order, the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law."

In the decisions in *The State of Bombay Vs. Purushottam Jog Naik*, *Biswabhusan Naik Vs. The State of Orissa*, and in *The State of Bombay Vs. Bhanji Munji and Another*, the Supreme Court took a similar view and held that evidence in such matters can be adduced before the Court even though there is no recital in respect of the same in the impugned order or notification. Inasmuch as in the copies provided to the respondents, no ground had been taken of the absence of the recital and no challenge had been made to the referring order on that ground, we, by means of the order dated 5th of October, 1961 permitted the respondents to file such an affidavit.

9-10. (His Lordship, after considering the affidavit filed on behalf of the respondents (c. f. paras 9, 10) proceeded as follows:--)

For the reasons stated above, we have come to the conclusion that the State Government did in fact address itself to the question as to whether or not the nature of the case or the convenience of the parties required its doing referred to an Adjudicator and after doing so referred it to him. Consequently, we are of the opinion that there is no substance in the first submission of the learned counsel of the petitioner.

11. We will now come to the second ground raised by learned counsel for the petitioner, i.e. that the award in the Adjudicator was without jurisdiction to the extent that it went into the question of excessiveness of punishment. The submission of the learned counsel is that the management has unfettered discretion in the matter of punishment and that inasmuch as the Adjudicator had held Sharma guilty of misconduct, howsoever slight, it was prevented from going into the question as to whether the punishment of dismissal was appropriate or excessive.

(His Lordship after referring to the findings recorded by the Adjudicator proceeded:)

On the basis of these findings the Adjudicator held that the services of Sri Sharma were wrongfully and unjustifiably terminated and that he should be reinstated with continuity of service and be paid wages for the unemployment period together with all emoluments and money value of all facilities and concessions which he would have enjoyed had he been in active service. The Adjudicator also awarded Rs. 50/- as costs to the union.

12. It has not been contended that the findings recorded by the Adjudicator were not based on evidence, in fact we have carefully gone through the award of the Adjudicator and feel fully satisfied that the findings recorded by him are not only based on evidence but are eminently reasonable and just. We are not impressed with the submission of Mr. Khare that the Adjudicator did in fact find Sharma guilty of misconduct. The findings of the Adjudicator with regard to misconduct, as we have shown above, are extremely qualified and it is clear that the whole trouble started because the management took the most unjust attitude or deducting Rs. 15/- from the wages of Sharma without showing it in the pay sheet and other documents. In other words the management wanted Sharma to accept RS. 15/- less than what they were showing to have paid, in the circumstances the Tribunal rightly held that Sharma could not be accused of any misconduct. It is true that the Tribunal found in effect that Sharma should not have obstructed other people from accepting their wages, but it has also been categorically found that this he did only for a very short while and that too because he was acting under righteous indignation. It is therefore not correct to say that the Adjudicator actually found him guilty of misconduct.

In any case, even if this finding amounted to slight misconduct on the part of Sharma, we are satisfied that the Adjudicator also intended to hold that the punishment of dismissal imposed on him was actuated not by the motive of punishing a fault but of victimising a person whose trade union activities were not pleasant to the management. Therefore, in effect, the finding is that the punishment was awarded not as a corrective measure but in order to get rid of a person who was not persona grata with the management. We are not satisfied that in taking the approach of the matter the Adjudicator did anything which was beyond his jurisdiction. No case has been brought to our notice in which facts are similar to those before us. Our attention was invited to *Caltex (India) Ltd. Vs. E.*

Fernandes and Another, for the proposition that an industrial Tribunal or an Adjudicator has no jurisdiction to go into the question of quantum of punishment. Having carefully perused the decision we are of the opinion that the ruling is distinguishable as pointed out by the Adjudicator and, in any case, does not help the petitioner. All that their Lordships have laid down in that case is that the measure of punishment to be meted out is within the sole discretion of the employer and the Tribunal or the Adjudicator cannot interfere with it but that is only in a case where the employer is not actuated by any mala fide or unfair labour-practice or victimisation, and not in a case where the enquiry has been unfair. We have already shown above that the Adjudicator, on the basis of the evidence produced before him, recorded a clear finding that not only the enquiry was not fair, it was also made at the back of Sharma and further that the punishment awarded to Sharma by the management was to victimise the former. If anything, this case goes against the petitioner distillery.

13. Our attention was then invited to *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, . That case also does not support the petitioner because their Lordships have clearly held that a Tribunal would not be concerned with the measure of punishment or with its harshness

"except perhaps to the extent that it might bear on the question whether the action of the management was bona fide or was actuated by the motive of victimization." the next case on which reliance was placed by my learned-counsel is *Hanuman Jute Mills Vs. Amin Das and Another*, . That case also clearly lays down that in case of unfair labour practice or victimisation even the question of punishment can be gone into by a Tribunal. We find nothing, in *McKenzie and Co. Ltd. Vs. Its Workmen and Others*, on the basis of which it can be held that the award of the Adjudicator in the present case is void. All that case lays down is that the question of misconduct and punishment is normally the preserve of the management, but if their action is actuated by bad faith, caprice or discrimination and is vindictive and amounts to unfair labour practice or victimization the Tribunal has ample jurisdiction to go into all questions. Reliance was next placed upon *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, , in our judgment that case too does not support the contention of the learned counsel and there also it was held that a Tribunal or an Adjudicator would have complete jurisdiction to interfere in a case where the management had been guilty of victimisation or unfair labour practice and there had been a basic error of failure of the principles of natural justice in the enquiry against the workman. All these cases can be used in order to support and uphold the award of the Adjudicator in view of his findings to which no exception can be taken.

It may also be mentioned that in *American Direct Tea Trading Co. Ltd. v. workmen of Nahartoli Tea Estate* 1961 4 Lab LJ 525 (SC) the Supreme Court clearly explained their decision in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, in the following words:--

"It seems from this fact that it was practically accept-ed before the Industrial Tribunal that there was no proper managerial enquiry and it was left to the Industrial Tribunal-to decide for itself whether the dismissal of onamesnwar was justified. In these circumstances there was no scope for the application of the principles laid down -in Indian Iron and Steel Co. 1958 1 Lab LJ 260: Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, which applies only when a proper managerial enquiry has been held."

In The Punjab National Bank Ltd. Vs. Its Workmen, their Lordship held that

"in domestic enquiries, the principles of natural justice must be followed and the employee against whom disciplinary action is sought to be taken must be given a charge sheet, evidence against him must be recorded in his presence and he must have an opportunity to rebut the said evidence. It is only in a case where the management has held a pro per enquiry and the punishment awarded is a bonafide one and indicted with a view to punish for the wrong committee but not with a view to victimise a worker that the industrial Tribunal or a Labour Court would have no jurisdiction to go into the question of quantum of punishment, but so far as we are aware it has never been held by any Court that even though an enquiry is made at the back of the workman and the punishment of dismissal is awarded quite in disproportion to the fault committed by him and only with a view to victimise him the Tribunal or the Ad- judicator would have no jurisdiction to go into the question of punishment. For the reasons mentioned above we are satisfied that there is no substance in the second submission or the learned counsel also and we have no hesitation in rejecting it.

14. We will now address ourselves to We mirth submission of the learned counsel leaving the third one for the present. It is contended that inasmuch as the Adjudicator did not pronounce the award in open Court in the presence of the parties it is void. Reliance was placed upon the provisions of Clause 7 of the Government Order notified on the 14th of July, 1954. That provision reads as follows;

"7. The decision of the Tribunal shall be in writing and shall be pronounced in open Court and dated and signed by the member or members of the Tribunal, as the case may be, at the time of pronouncing it:

Provided that nothing shall be deemed to prevent a member from recording a minute of dissent to the award or decision."

It would be noticed that in terms Clause 7 applies only to a Tribunal and not to an Adjudicator. It was however contented by Mr. Khare that what is good for the Tribunal Is also good for the Adjudicator, and even though Clause 7 may not specifically mention an Adjudicator but is confined only to a tribunal it should be so read as to include an Adjudicator also. We are unable to read something in Clause 7 which does not exist there. It would be noticed that whenever the order required the Adjudicator to act in a manner similar to the Tribunal or where common procedure to both was intended it clearly provided for it.

For example, Clause 18 of the Order requires a Tribunal or an Adjudicator to hear dispute and give its or his decision

"Within 180 days (excluding holidays but not annual vacations observed by Courts subordinate to the High court from the date of reference made to it or him to the State Government",

and to

"thereafter, as soon as possible, supply a copy of the same to the parties to the dispute, and to such other persons or bodies as the State Government may in writing direct."

Similarly Clause 19 provides that the decision or award of the Tribunal or Adjudicator shall remain in operation to a period of one year, or for such shorter period as the Tribunal or the Adjudicator may fix. It is therefore obvious that the order has specifically provided the extent to which the Adjudicator has to conform to the Rules intended for the governance of the Tribunal, and it is not possible for us to extend the scope of those provisions beyond their statutory limits. It is also noteworthy that in the order notified on March 15, 1951, which preceded the present Order Clause 16 clearly provided that

"the Tribunal or the Adjudicator shall hear dispute and "pronounce" (underlined (here in " ") by us) Its decision within forty days. Therefore the scheme of that Order was that even an Adjudicator had to pronounce his decision or award, but in the present Order that has not been provided for with the result that it must be held that the departure is deliberate. We have, therefore, no hesitation in rejecting this submission of the learned counsel also.

15. We now advert to the third submission of the learned counsel but before we deal with the merits of the contention, It would contribute to a clear understanding of the question before us if we mention that the U.P. Industrial Disputes Act 1947 (hereinafter referred to as the Act) is a much amended Act, and notice the relevant amendments introduced in 1953 by means of U.P. Act XXIII of 1953 and in 1957 by Acts I and XXIII of that year. Section 6, of the Act as it stood before the commencement of U.P. Act 1 of 1957 was as follows:

"6(1) When an authority to which an industrial dispute has been referred to adjudication has completed its enquiry, it shall, within such time as may be specified, submit its award to the State Government.

(2) The State Government may either enforce for such period as it may specify all or any of the decisions in the award; or, either of its own motion or on application made to it, remit the award for reconsideration.

(3) The adjudicating authority shall, after reconsideration, and within such period as may be specified by the State Government submit its award; the State Government may then enforce for such period as it may specify all or any of the decisions in the award,"

By means of the Amending Act No. XXIII of 1953 Section 6-A was introduced in the Act. That provision reads as follows:

"6-A. Enlargement of time for submission of awards --where any period is specified or is required to be specified in any order made under or in pursuance of this Act referring any industrial dispute for adjudication within which the award shall be made, declared or submitted, it shall be competent for the State Government from time to time, to enlarge such period even though the period originally fixed or enlarged may have expired or the award made."

The U. P. Act 1 of 1957 extensively amended the ACT, and the amendments came into force with effect from 16th April, 1957. Admittedly, the present reference was made before the 1957 amendments were introduced in the ACT and enforced, one basic change that was brought in by means of the Act I of 1957 was that whereas in the unamended Act there were no direct provisions for the establishment of Industrial Tribunals or Labour Courts and with regard to the manner in which reference of disputes was to be made to them and the same could be done only under an order promulgated u/s 3 of the Act, after the amendment there are direct provisions in respect of these matters In the Act itself. The unamended Section 6-A was substituted by a fresh provision bearing the same number (hereinafter referred to as the new Section 6-A). It read as follows;

"6-A. Commencement of the award-

(I) An award (Including an arbitration award) shall become enforceable on the expiry of thirty " days from the date of its publication u/s 6;

Provided that if the State Government is of the opinion that it will be inexpedient, on grounds of social justice, to give effect to the whole or any part of the award, the State Government may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days:

Provided further that an arbitration award shall not become enforceable where the State Government after such inquiry as It considers necessary, is satisfied that the same has been given or obtained through collusion, fraud or misrepresentation.

(2)

(3)

(4)

Section 16 and 17 of the U. P. Act No. 1 of 1957 read as follows:

"16. If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before any authority constituted under the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), as in

force before such commencement, the dispute may be adjudicated and the proceeding disposed of by that authority after such commencement as if this Act had not been passed." "17. Removal of transitional difficulties.

(1) The State Government may for the purpose of removing any difficulties particularly in relation to the transition from the provisions of the Principal Act to the provisions of that Act as amended by this Act, by order direct that the Principal Act amended as aforesaid and any rules or orders framed or issued under the Principal ACT, shall during the period of two years next after the commencement of this Act have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary or expedient.

(2) "

16 We may also mention that Section 6, as it originally stood, has been substituted by a new section bearing the same number by means of Act I of 1957. It reads as follows:

"6. (1) Where an industrial dispute has been referred to a Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government.

(2) The award of a Labour Court or Tribunal shall be in writing and shall be signed by its Presiding Officer.

(3) subject to -the provisions of Sub-section (4) every arbitration award and the award of a Labour Court or tribunal, shall, within a period of thirty days from the date of its receipt by the State Government, be published in such manner as the State Government thinks fit.

(4) The State Government may before publication of an award of a labour Court or Tribunal under Sub-section (4), remit the award for reconsideration of the adjudicating authority, and that authority shall, after reconsideration submit its award to the State Government, and the State Government shall publish the award in the manner provided in Sub-section (3).

(5) Subject to the provisions of Section 6-A, an award published under Sub-section (3) shall be final and shall not be called in question in any Court in any manner whatsoever,

(6) "

Section 16 of the Act 1 of 1957 was also amended by U. .P. Act No. XXIII of 1957 and the following words were added thereto:

"And the provisions of Section 6-A of the Principal Act shall remain enforceable with reference to such a proceeding." It is contended that as Section 6 now stands the award or the Adjudicator in the present case cannot be enforced

under its provisions. The argument is that the awards that can be enforced u/s 6 are those which have been made on a reference to a Labour Court as defined in Section 4-A or a Tribunal as defined in Section 4-B and must be an award within the meaning of that word in the Act. It may be stated that Act 1 of 1957 substituted the original definition of award by a new one and Section 2(c) in its present form reads as follows-

"2(c) "Award" means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court or Tribunal and includes an arbitration award made u/s 5-B."

The submission is that an award by an Adjudicator is not comprehended within the word "award" as now defined and consequently the State Government could not get that award published under Sub-section (3) of the new Section 6. The argument is that as the Act stands now after all the amendments there is no provision in it for the publication and enforcement of an award made by an Adjudicator under the provisions of the Order notified on the 14th of July, 1954. It is contended that the only provision under which such an award could be enforced was the old Section 6 which having been replaced by a new provision, bearing the same number, has no legal existence and cannot be invoked in their aid by the respondents in the present case. The submission on behalf of the respondents on the other hand is that in the first place the word "award" occurring in the new Sections 6 and 6-A should be widely construed and, secondly, that in any case the provisions of Section 16 of U.P. Act 1 of 1957 save the proceedings already started and provide for their continuance as if Act No. 1 of 1957 had not been passed. Special emphasis is laid on the words added to that section by Act XXIII of 1957 which we have already reproduced on the last page and which make the provisions of Section 6-A of the Principal Act enforceable in respect of proceedings started before Act 1 of 1957 was enforced,

17. It appears to us that it is not possible to extend the definition of the word "award" so as to include the awards of the Adjudicators given under the Order notified on the 14th of July, 1954 read with the unamended Act. It is a well accepted principle of construction that when a word has been defined by the statute it can have no other meaning than the one given to it by the definition clause. Nothing has been pointed out to us on behalf of the State to justify the conclusion that in the new Sections 6 and 6-A the word "award" has been used in a wider sense than its definition in Section 2(c) of the Act. We have already said above that the scheme of the Act was drastically changed by Act 1 of 1957. The definition of "award" as now given had necessarily been framed to fit in with the changed conditions, and it is obvious that it cannot be stretched to embrace in its fold matters which do not find place in the amended set up of the Act. We, therefore, reject the submission of the respondents that the award of the Adjudicator in the present case can be comprehended by that word occurring in the new Sections 6 and 6-A of the Act.

18. However, after having given our anxious consideration TO the submission

made at the Bar and to the language of SECTION 16 of Act I of 1957 we have come to the conclusion that by the aid of that provision the award in the present case can be enforced. Section 16 clearly provides that if any proceeding was pending immediately before the commencement of Act 1 of 1957 in relation to an "industrial dispute before, any authority constituted under We Act as in force before such commencement the dispute may be adjudicated and the proceeding disposed of by that authority after such commencement as if this Act had not been passed. The scheme of the Act and the Order notified on the 14th of July, 1954 was that a reference could be made only by the State Government to a Tribunal or an Adjudicator. The Adjudicator or the Tribunal had no jurisdiction to directly entertain and adjudicate upon an industrial dispute and their jurisdiction was confined only to deciding such disputes which were referred to them by the State Government, even after the Adjudicator or the tribunal had given the award they could not themselves enforce it and had, under the provisions of unamended Section 6(1), to submit the same to the State Government. Once that was done the State Government was free under Sub-section (2) of the unamended Section 6 either to enforce the award for such period as it may specify or to remit the same for reconsideration by the Tribunal or the Adjudicator whoever had given the award. The Government was not bound to enforce the whole award and it was quite free to accept only some and not all the decisions in the award. The point is that the industrial disputes were to originate before the Government and were also to be finally closed by it. The Adjudicator could neither open proceedings of a reference nor close it. The question therefore that requires consideration is whether it can be said that, from the date when the State Government refers the dispute to the date when we award is received back by the Government and enforced, any proceeding is pending before it. In other words can it be said that once the State Government has referred the dispute to an Adjudicator and before the award is submitted by him the same is pending only before him and the matter in no form is pending before We State Government.

The contention of the learned counsel for the petitioner is that no sooner the reference of the dispute is made to an Adjudicator or a Tribunal the state Government loses an jurisdiction in the matter, and is seized of the matter again only when the award is submitted to it. In other words, it is contended that during the period the matter is before the Adjudicator it cannot be said that it is also pending before the State Government, and that inasmuch as the reference in the present case was already made before Act I of 1967 came into force the matter was pending before the Adjudicator who had not till then given the award, and not before the State Government. Clause 15 of the order notified on 14-7-1954 is clear, and even the learned counsel for the petitioner has conceded, that even though a reference may have been made by the State Government to a Tribunal or an Adjudicator the Government retained the power to withdraw the same at any stage. Therefore the legal position is that even during the limited period when the reference was before the Adjudicator the Government did not

lose seizin over the case, in other words the control of the Government throughout continued over the proceedings, and it cannot be said that the matter was not pending before them or they had become functus officio even at the stage when The Adjudicator was seized of it. The position of the Government is analogous to that of a Civil Court when it sends a particular issue for decision by a revenue Court or to that of a revenue Court when it sends an issue of a case before it for decision by a Civil Court. It cannot be said that no proceedings are pending before the civil or the revenue Court during the pendency of the proceedings relating to the decision of the referred issue before the revenue or the Civil Court as the case may be.

Analogy is also provided by the provisions of the U. P. Consolidation, of Holdings Act where, u/s 12(5) a reference by the Consolidation Officer is made to the Civil Court for remitting a dispute to the Arbitrator for decision. It cannot be said that when the proceedings are pending before the Civil Judge or the Arbitrator the Consolidation Officer ceases to have jurisdiction over the matter or even the proceedings. Similarly, if a suit is referred to an Arbitrator for decision can it be said that during the period the matter is before the Arbitrator the suit is not pending in the Court which referred the matter to the Arbitrator, the position being that the suit is tiled in the court and after the award of the arbitrator is received it has to become a rule of the Court before, it would have effective force. We are, therefore, unable to hold that in this particular case when the provisions of Act 1 of 1957 came into force no proceedings were pending before the State Government.

19. Learned counsel for the petitioner has not draughted to our notice any decision in this connection which may support his contention. All that he has been able to contend is that there is a lacuna in the Act and it never struck the legislature that there were earlier proceedings pending from before on the date of the enforcement of the provisions contained in Act I of 1957 and consequently to failed to make any provision for it in the Act. It is well settled that a lacuna cannot be easily assumed in an Act and in any case in view of our interpretation of Section 16 there is no question of a lacuna.

20. In the alternative, it is contended that the legislature in the shape of Section 17 of Act I of 1957 had conferred ample powers on the State Government to

"direct that the Principal Act amended as aforesaid and any rules or orders framed or issued under the principal Act shall during the period of two years next after the commencement" of Act 1 of 1957, "have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary or expedient," and that inasmuch as the State Government did not keep alive the unamended Section 6 the award cannot now be enforced it is true that the State Government did not pass any orders u/s 17 keeping alive the provisions of the of Section 6 for two years next after the commencement of Act I of 1957, but that, in our opinion, would not result in the awards prior to the amendment of 1957 being rendered un-enforceable. We have

already held above that Section 16 of the Act 1 of 1957, even without the words added to it by Section 8 of Act XXIII of 1957, would save the proceeding started and the awards made before the passing of Act of 1957, and the same can be enforced under the un-amended Section 6 read with Clause 19 of the Order published in the State Gazette dated the 14th of July, 1964.

It has been contended that Section 16 speaks of an authority constituted under the U.P. Industrial disputes ACT 1947, and that inasmuch as the State Government has not been created an authority under the U.P. Industrial Disputes Act any proceedings before it cannot be saved by Section 16 of the Act. We are not impressed with this argument. It is true that the State Government existed even before Act XXVIII of 1947 was passed and has not been created thereunder. In our view the word "constituted" has been used in a wider sense and includes not only the authority created under the Act but also contemplated by the Act. It is well established that in order to avoid injustice, confusion and absurdity it is permissible to emerge the meaning of a word. (See *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, , *Grey v. Pearson*, (1857) 6 H. LC. 61 at p. 106, AIR 1939 47 (Privy Council) .

In the present case confusion and injustice would be caused" it awards on the basis of references which were competent cannot be enforced because of amendment of Act XXVIII of 1947 in 1957. It would not be perverting the expression "any authority constituted under the U. P. industrial Disputes Act, 1947" if we hold that it includes not only the authorities created by it but also contemplated by it such as the State Government. We, therefore, hold that Section 16 applies even to proceedings before the State Government.

21. It was next contended that the provisions of Section 17 are mandatory and inasmuch as the State Government did not issue any order under that section the law has to take its own course and the awards cannot be enforced. In the first place, whether Section 17 is mandatory or not it cannot affect the provisions of Section 16, and inasmuch as we have already held above that the proceedings were pending before the State Government the award could, by virtue of Section 16, be enforced u/s 6 of the unamended Act read with Clause 19 of the Order published on 14th July, 1954; and secondly, we are not satisfied that in fact Section 17 is mandatory. That section uses the word "may" which prima facie suggests that it is not mandatory but directory. Apart from it, it is an enabling section which confers some power on the Government which power it would not otherwise have. The Government cannot be enforced to exercise that power, and a perusal of the section itself leads to the conclusion that it is not mandatory but directory in nature. It was held in *Banwarilal Agarwalla Vs. The State of Bihar and Others*, , as follows:--

"As has been recognised again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence or invalidity, or only directory, i. e. a direction the non-observance of which does

not detail the consequence of Invalidity, whatever other consequences may occur, but in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or may it not? To decide this we have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same",

On the basis of this authority and that of *Rani Drig Raj Kuer Vs. Raja Sri Amar Krishna Narain Singh*, where the following was laid down it cannot be said that considering the language of Section 16 it was a mandatory provision:

"But it is well known that the use of the word "shall" is not conclusive of the question. . . . The intention of the legislature has to be gathered from the whole statute".

See also *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, which was relied on in this case.

22 We are therefore satisfied that the provisions of Section 17 are not mandatory. It may also be stated that even if it be assumed that the Government had no option in the matter and was required to pass orders u/s 17 it would not be a mandatory provision for the simple reason that the Government could not be forced by the parties who were being adversely affected by such an order not being passed to pass one. All that parties or the public could do was to request the State Government to pass an order but they could not compel it. In *Montreal Street Railway Company v. Normandin* AIR 1917 P C 142, the Judicial Committee observed as follows:--

"When the provisions of a statute relate to the performance of a public duty and the case is such that to null and void acts done in neglect of this duty would word serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, such provisions are to be held to be directory only, the neglect of them though punishable, not attesting the validity of the acts done".

23. For the reasons mentioned above we are not impressed with the submission that merely because the state Government did not pass any orders u/s 17 or Act I of 1957 the present award made prior to the amendment cannot be enforced.

24. We may also state that, in our opinion, by virtue of the words added by means of Act XXIII of 1957 to Section 16 of Act 1 of 1957 the pre-amendment awards can also be enforced u/s 6-A of the Act as it stands today, it was contended that what has been made applicable are the provisions of the original Section 6-A and not the amended Section 6-A. Section 8 of the U. P. Act No. XXIII of 1957 by which these words were added to Section 16 reads as follows:

"8. In Section 16 of the Uttar Pradesh Industrial Disputes (Amendments and

Miscellaneous Provisions) Act. 1956, the following words shall be and be deemed at all times to have been added in the end:

"And the provisions of Section 6-A of the Principal Act shall be applicable with reference to such a proceeding". It is clearly provided that these, words would be deemed to have always existed. The preamble of the U. P. Act No. XXIII of 1957 reads as follows:

"Whereas it is expedient to amend the U. P. industrial Disputes Act, 1947, for the purposes hereinafter appearing."

The preamble shows that Act no. XXII of 1957 was clearly brought in to amend the 1947 Act. At the time when Act XXIII of 1957 was enforced Section 15 was already a part, of the 1947 Act having been inserted therein by virtue of Act 1 of 1957. Consequently, the words "Principal Act" clearly mean U. P. Act No. XXVIII of 1947 as amended: by U. P. Act No. 1 of 1957. Reference to Section 6-A in the words added to Section 16 obviously is to! Section 6-A which was brought in by Act I of 1957 and can-not refer to the original Section 6-A which stood repealed by Act 1 of 1957. Act XXIII of 1957 also amended Section 17 of Act 1 of 1957. The words which were by Section 8 of Act XXIII of 1957 added to Section 16 originally found place in Section 17 those words were taken away from that section and added to Section 16. The view that Section 6-A of the Principal ACT mentioned in the words added to Section 16 refers to Section 6-A in the 1947 Act as it stood after the inclusion of the provisions introduced by Act I of 1957, finds support from *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, where their Lordships observed as follows:--

"The rule is that when a subsequent Act amends an earlier one In such a way as to incorporate itself, or a part of itself, into the earlier, then the earner Act must there-after be read and construed (except where that would lead to a repugnance, Inconsistency or abusurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. ?

Sections 2 to 15 of U. P. Act No. 1 of 1957 which include the new Sections 6 and 6-A were incorporated or merged into the main Act i.e. Act No. XXVIII of 1947 while Sections 16 and 17 stood apart and were not capable of being bodily lifted and placed in Act XXVIII of 1947 because they were not of a permanent nature and were not intended to be a part of Act XXVIII of 1947. Consequently there can be no escape from the conclusion that Section 6-A mentioned in the words added to Section 16 is the new Section 6-A and not the old one.

25. It is also noteworthy that in U. P. Act No. XXIII of 1957 U, P. Industrial Disputes Act, 1947, as amended from time to time has been referred to as the principal Act, and whenever any amendment was made to the provisions of the Act as amended from time to time the Act was referred to as U. P. Act No. XXVIII of 1347, but wren amendment of Sections 16 and 17 was made the Act was referred to as the Uttar Pradesh Industrial Disputes (Amendment and

Miscellaneous Provisions) Act, 1956, (Act no. 1 of 1957. To illustrate the point a reference may be made to Section 7 of Act XXIII of 1957 which reads as follows:--

"7. After Section 6-R of the Principal Act the following shall be inserted as new Sections. 6-S to 6-O."

A reference to Sections 8 and 9 of the same Act shows that while amending Sections 16 and 17 of Act of 1957 the legislature did not make a reference to the Principal Act but to the U. P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, which is no other than Act I of 1957.

26. It appears to us that because of the fact that Section 2 of Act XXIII of 1957 is in the nature of a definition clause and provides a key for the explanation of the expression "Principal Act" and on the principle that the same word occurring in a statute at different places must be given the same meaning unless the context otherwise inquires and if in doing so a manifest contradiction of the apparent purposes of the enactment or some inconvenience or absurdity, hardship or injustice, presumably not intended, is caused, the words "Principal Act" in Section 8 must be given the same meaning as they have in Section 2 of ACT No. XXIII of 1957. Section 2 of Act XXIII of 1957 so far as relevant for our purposes, is in the following words:--

"2. In Section 4-E of the U. P. industrial Disputes Act, 1947 (hereinafter referred to as the principal ACT for Sub-section (1) the following shall be substituted".

Against this view of ours the submission of the learned counsel is that this section clearly states that by the words "Principal Act" is meant the original U. P. industrial Disputes Act, 1947 (Act No. XXVIII of 1947) and not the amended one. Inasmuch as Section 4-E was brought in Act No. XXVIII of 1947 by means of Act No. 1 of 1957 the words "in Section 4-E of the U. P. Industrial Disputes Act, 1947" occurring in Section 2 of Act No. XXIII of 1957 obviously mean the U. P. Industrial Disputes Act, 1947, as amended and inclusive of the provisions inserted by ACT I of 1957 and cannot mean the Act in the original form. Therefore when Section 2 speaks of the U. P. Industrial Disputes Act, 1947, as the Principal Act it clearly is referring to the Act including the amendments, and not as it was originally passed. The only substantial submission against the view that the reference to Section 6-A in the last line of Section 16 which was introduced therein by Section 8 of Act XXIII of 1957, is not to the unamended section but to the amended one, is that Section 8 of Act XXIII of 1957 itself provides that the words added to Section 16 would be "deemed at all times to have been added in the end". In other words, it is contended, that Section 16 should be read in the following manner right from the date of the enforcement of Act 1 of 1957:

"16. If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before any authority constituted under the U. P. industrial Disputes Act, 1947, as in force before such

commencement, the dispute may be adjudicated and the proceeding disposed of by that authority after such commencement, "as if this Act had not been passed, "and the provisions of Section 6-A of the principal Act shall remain enforceable with reference to such, a proceeding". (under-lined ((here into ") by us).

The argument, therefore, is that inasmuch as in Act 1 of 1957 the reference to the Principal Act was to the unamended Act XXVIII of 1947, the reference to Section 6-A in Section 16 must be deemed to the unamended Section 6-A. It cannot be said that the submission is completely without substance. In fact the submission is based upon the view that our brother Mathur took in *India Reconstruction Corporation Ltd. v. J.N. Srivastava*, Civil Misc. writ No. 731 of 1958 connected with Civil Misc. Writ Nos. 732 to 735 of 1958 D/- 3-5-1960 (All), but having given our anxious consideration to the argument we have come to the conclusion that even though Acts I of 1957 and XXIII of 1957 have not been very ably drafted which has resulted in some confusion, Section 6-A referred to in the lines underlined in Section 16 can have reference only to the amended Section 6-A and not to the unamended one. The reason why we have come to this conclusion is that the word "deemed" means the one which in reality is not but has to be treated as such by legal fiction. (See AIR 1930 54 (Privy Council) and *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, .

The legal effect of making the lines underlined (here into " ") a part of Section 16 is to import a legal fiction and to say that even though in fact these lines did not exist in Section 16 on the date when that section was enforced, they would be treated! to have existed. But the principle of legal fiction cannot be stretched too far and cannot be used to override the express provisions of Section 2 of Act XXIII of 1957 which clearly provide that a reference to the Principal Act is reference to Act No. XXVIII of 1947 as-amended by Act I of 1957 and other earlier amending Acts. It appears to us that by oversight or due to a drafting error care was not taken while framing Section 8 of Act XXIII of 1957 to clearly provide that the "words "Principal Act" occurring in the lines that were intended to amend Section 16 had reference to the amended Section 6-A. However, it is well settled that want of skill in drafting a provision does not go to the root of the matter and should not affect the correct interpretation of the statute. (See (1886) 11 A. C. 627, *Mt. Mewa Kunwari Vs. Bourey and Another*, and *Oudh Sugar Mills Ltd., Hargaoon Vs. State of U.P. and Another*, .

27. It has also been urged before us that the words which we have underlined in Section 15 wrongly found then place in Section 17 and not in Section 16 of Act 1 of 1957, and that by means of Section 8 of Act XXIII of 1957 the legislature corrected the drafting error and added those words to Section 16 after deleting them from Section 17. The submission of the learned counsel, therefore, is that if these words had actually found place as they should have in Section 16 it is obvious that the expression "Principal Act" occurring in the words underlined could have reference only to the provisions of Act XXVIII of 1947 as it stood before the amendment by Act 1 of 1957, and consequently the reference to

Section 6-A in the words underlined must be reference to the unamended Section 6-A and not to the amended one. mere is nothing on which we can hold that the words underlined have wrongly been shown in Section 17 by a drafting error. Therefore the very foundation for the submission is wanting, and as we have already pointed out earlier that Section 2 of Act XXIII of 1957 is almost conclusive of the matter, it is not possible for us to read" the words "Principal Act" occurring in any part of Act XXIII of 1957 in any other sense than that of Act XXVIII of 1947 as amended by Act 1 of 1957.

28. On behalf of the workman and the State it was also contended that, by virtue of Section 6 of the General Clauses Act, the provisions of Section 6-A as it stood before the amendment by Act 1 of 1957 would be applicable to the present case and the present award could have been published and enforced under that provision. This argument was made only in the alternative, in our judgment there can be no application of Section 6 of the U.P. General Clauses Act in the present case. That section saves the proceedings already started under a repealed Act, the present is not a case of a repealed Act but of amendments in an existing Act. In our view, therefore, Section 6 of the U.P. General Clauses Act is not applicable to the fact of the present case.

29. Our attention was invited to the decision of Tandon, J. dated 22nd July, 1959 in Civil Misc. Writ No. 899 of 1959 connected with Civil Misc. Writ No. 1025 of 1958 (All) and that of Mathur, J. in Civil Misc. writ no. 731 of 1958 (All), which we have already referred to above. With great respect to our learned brothers we have not found ourselves in a position to accept the conclusion: that Section 6-A referred to in the lines underlined and added to section has reference to the unamended Section 6-A. Tandon, J. was also of the view that the award given in a reference made before the enforcement of Act 1 of 1957 could not be enforced u/s 6 by virtue of Section 10 of Act 1 of 1957, but in this respect Mathur, J. did not agree with him. For the reasons which we have given in this Judgment we find ourselves unable to agree with Tandon, J. and agree with the conclusion of Mathur, J.

30. In view of the above conclusions we are of opinion that there is no substance in the third ground also urged by learned counsel, and the petition is liable to be dismissed.

31. The only question that now remains to be considered is that of costs. There were several hearings in this case and the case* had to be adjourned with a view to enable the respondents to file supplementary affidavits in order to meet the submissions which were being made in Court but in connection with which no grounds had been taken or allegations made in the copies of the writ petition and the affidavit filed in support of it which were provided to the respondents. Adjournment was also occasioned because learned counsel for the petitioners wanted to cross-examine Mr. Pant who had filed an affidavit on behalf of the respondents. It is obvious, therefore, that the ordinary cost of Rs. 517- would be far too insufficient in the circumstances of the present case. In our judgment the

petitioner should pay a sum of Rs. 200/- as costs to the respondents i.e. Rs. 100/- to respondents Nos. 1 and 2 and another Rs. 100/- to respondent No. 3.

32. The result is that the petition is dismissed with costs which we assess at a figure of Rs. 200/-.