

(1956) 04 PAT CK 0030

In the Patna High Court

Case No : Misc. Judicial Case No's. 546 and 590 of 1955

D.N. Ganguly and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-1956

Acts Referred:

General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 10(1)

Citation : AIR 1956 Patna 449

Hon'ble Judges : Das, C.J.; Ramaswami, J

Bench : Division Bench

Advocate : B.C. Ghose, A.C. Mitra, Ranen Roy and K.Das, in No. 546 and S. Banerji, K.D. Chatterji, S.N. Bhattacharjee and Chuni Lal, in No. 590, for the Appellant; A.G., S. Banerji, K.D. Chatterji and A.B.N. Sinha, (in No. 546) and B.C. Ghosh, Ranen Roy, T.K. Das, A.C. Mitra, Shrideo Misra, T.K. Prasad, Uday Sinha, Ramnandan Prasad No. II, Purnendu Narayan and A.B.N. Sinha and A.G. (in No. 590), for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—In M. J. C. No. 590 of 1955, the petitioner is Bata Shoe Company Ltd. which has a factory at Digha. In M. J. C. No. 546 of 1955, the petitioners are 59 dismissed workmen who had been previously employed in the Digha factory. Both these applications are considered by the State of Bihar, who is the principal respondent. In M. J. C. No. 590 of 1955, there is another principal respondent, the Bata Mazdoor Union. The Chairman of the Industrial Tribunal is also a respondent in both these applications.

2. In February, 1954, there was a dispute between Bata Shoe Company Ltd (which will be hereinafter referred to as the Company) and its workmen. Conciliation proceedings were started, and on 18-2-1954, a settlement was duly reached and recorded. But on 23-2-1954, a number of workmen went on strike which was illegal as there was contravention of the provisions of Section 23(c), Industrial Disputes Act, 1947.

The State Government issued a press note pointing out that the strike was illegal and advised the workmen to give up strike and join the work immediately. But the workmen failed to return to work in spite of warning. The Company thereafter served the workmen with charge-sheets and asked them to submit explanation. As the workmen failed to return to work or to give explanation, the Company issued orders dismissing about 275 workmen including respondents 3 to 62. Later on the Bata Mazdoor Union hereinafter referred to as the Union) made a representation to the Company and as a result, the Company re-employed 76 workmen out of those dismissed.

On 16-8-1954, the Union served a notice upon the Company enumerating several demands. The main question raised was whether an increase in the volume of employment at the Digha factory was justified and whether the Company should take back all the workers who were dismissed as a result of the strike of 23-2-1954. On 2-9-1954, the dispute was settled by negotiation and the settlement was recorded in Memorandum of the same date (vide annexure 1 to the Company's application).

One of the terms of the settlement was that 31 workmen, namely, respondents 3 to 33 (of M. J. C. No. 590 of 1955) would not be given employment. But these 31 workmen did not abide by the terms of the settlement and raised a dispute regarding their employment. On 8-10-1954, the State Government acting in exercise of the power conferred by Section 10, Industrial Disputes Act referred the dispute to the Industrial Tribunal. The order of the State Government was to the following effect;

"No. III/D1-160 2/54L-15225 -- Whereas an industrial dispute exists between the management of the Bata Shoe Company Ltd., Digha Ghat, Patna, and their workmen mentioned in Appendix "A" regarding the matters specified in Annexure "A".

Now, therefore, in exercise of the powers conferred by Section 7 read with Sub-section (1) of Section 10, Industrial Disputes Act, 1947 (14 of 1947), the Governor of Bihar is pleased to constitute an Industrial Tribunal of which Mr. Ali Hasan shall be the sole member and to refer the said dispute to the said Tribunal for adjudication.

ANNEXURE "A".

Whether the dismissal of the workmen mentioned in Appendix "A" was justified; if not, whether they are entitled to reinstatement or any other relief?

By Order of the Governor of Bihar, (Sd.) B. P. Singh, Secretary to Government."

Appendix "A" contains a list of thirty-one workmen including Sri D. N. Ganguly, Sri M. P. Gupta and others. The Tribunal took cognizance of the reference on 13-10-1954 and directed the parties to submit respective memoranda. On 15-1-1955, the State Government made another reference u/s 10, of the dispute between the Company and 29 other workmen, namely, respondents 34 to 62.

This notification is Annexure IV to the Company's application and reads as follows:

"No. III/D1-1601/55L-696 -- Whereas an Industrial dispute exists between the management of Bata Shoe Company Ltd., Digha Ghat, Patna, and their workmen mentioned in Annexure "B" regarding the matters specified in Annexure "A".

Now, therefore, in exercise of the powers conferred by Section 7 read with Sub-section (1) of Section 10, Industrial Disputes Act, 1947 (14 of 1947), the Governor of Bihar is pleased to constitute an Industrial Tribunal of which Mr. Ali Hasan shall be the sole member and to refer the said dispute to the said Tribunal for adjudication.

ANNEXURE "A".

Whether the dismissal of the workmen mentioned in Annexure "B" was justified; and, if not, whether they are entitled to reinstatement or any other relief?

By Order of the Governor of Bihar, (Sd.) U. N. Mazumdar, Under Secretary to Government."

Annexure "B" to this notification includes the names of 29 workmen including Sri N. N. Ganguly, Sri A. Karim and others. The Industrial Tribunal took cognizance of this reference on 17-1-1955, and directed the parties to submit their written statements. On 24-1-1955, the Tribunal made an order amalgamating both the references, namely, Ref. No. 10 of 1954 and Ref. No. 1 of 1955.

On 30-5-1955, the Union filed an application before the Tribunal for being made a party to both the references. The application was moved by Sri Fateh Narain Singh, but the Tribunal dismissed the application by its order No. 39 dated 3-6-1955. The order of the Tribunal is in the following terms:

"Shri Fateh Narain Singh was heard all length on the petitions riled by the workmen for being impleaded as parties to the references Nos. 10/54 and 1/55. His contention in brief seemed to be that the management being in collusion With the opposite parties in those references was only making a show of contest and was not really placing necessary materials before the Tribunal. According to him many of these workmen acted as agents of the management in organising the strike and took active parts in the acts of violence committed during the trouble at the cost of the other peaceful workers in the factory.

It was their contention that if those elements were again taken back in the factory it would jeopardise the harmony and peace in the Industry. On these grounds the workmen in general through their General Secretary of the Union wanted to be impleaded as parties in order to place real and full facts before the Tribunal.

It was also contended that the award given in these references would seriously affect the finding to be given on issue No. 1 in reference No. 9/55 and so also it was necessary that the workmen of the concern should be impleaded as parties

to the reference in question as well. The last contention has already been disposed of in order No. 36 dated 31-5-1955 and need not be considered again. The other grounds mentioned in the petition need consideration.

On behalf of the dismissed workmen this prayer was vehemently resisted by Mr. Roy and Mr. Ghosh and it was contended on their behalf that the facts contained in the petition in question were far fetched and the ideas that the harmony and peace in the industry was involved in the result of this adjudication was more imaginary than real.

Reference was made to the case reported in "Lakshmi Talkies, Madras v. Chitti Babu 1954-1 Lab LJ 323 (Mad) (A) in which it was laid down that an individual dispute unless it was made at the instance of the Union of the workmen could not be termed as dispute in which other workmen were concerned. Exactly that was the case here and in the eye of law the result of the adjudication proceedings in these references in no way affected the other workmen of the factory and, if at all, any such assertion was made on their behalf, it was far fetched and not real.

It is difficult on the supposition of a remote possibility of the industrial peace being disturbed in the concern to implead the entire body of workmen of the concern as parties to these references specially when the appropriate Government did not consider it necessary to implead them as such. Even Mr. Bose appearing for the management who had no legal objection to their being made parties conceded that they were not necessary parties taut only proper parties. I am, therefore, unable to grant this petition of the workmen and thereby complicate the issue and the same has to be rejected."

3. On 7-6-1955, Sri Fateh Narain Singh made an application for review of the order of the Tribunal. This application was rejected on the same date. On 25-6-1955, Sri Fateh Narain Singh wrote a letter to the Labour Commissioner requesting that the Union should be impleaded as a party to Ref. Nos. 10 of 1954 and 1 of 1955. Meanwhile, the Industrial Tribunal proceeded to hear both the references and between 7-6-1955 till 14-9-1955, the Tribunal held eighteen sittings and heard evidence given on behalf of the Company.

On 14-7-1955, Sri Fateh Narain Singh sent a telegram to the State Government repeating the request that the Union should be made a party to the two references pending before the Industrial Tribunal. On 17-9-1955, the State Government issued a notification purporting to act u/s 10, Industrial Disputes Act. By this notification the State Government superseded the two previous notifications dated 8-10-1954 and 15-1-1955 and made a fresh reference of the dispute between the Company and the workmen to the Industrial Tribunal. The notification is to the following effect:

"No. III/D1-1601/55L-13028 -- Whereas the Governor of Bihar is of opinion that an industrial dispute exists or is apprehended between the management of the Bata Shoe Company Ltd., Digha, Patna, the workmen mentioned in Annexure "B"

and the workmen represented by the Bata Mazdoor Union, Digha, Patna," with regard to the matters specified in Annexure "A".

Now, therefore, in exercise of the powers conferred by Section 7 read with Sub-section (1) of Section 10, Industrial Disputes Act, 1947 (14 of 1947), and in supersession of Notification No. III/D1-1602/54L-1525 dated 8-10-1954, and No. III/D1-1601/55L-717 dated 15-1-1955, the Governor of Bihar is pleased to constitute an Industrial Tribunal of which Mr. Ali Hasan, Chairman, Industrial Tribunal, Bihar, shall be the sole member and to refer the said dispute to the said Tribunal for adjudication.

ANNEXURE "A".

Whether the dismissal of the workmen mentioned in Annexure "B" was justified or unjustified; and to what relief, if any, these workmen are entitled?"

Annexure "B" to the notification contains names of 60 workmen who had been mentioned in the annexures to the previous two notifications dated 8-10-1954 and 15-1-1955. It is important to notice that the dispute referred to the Industrial Tribunal by the notification dated 17-9-1955 is practically the same as referred to in the previous two notifications, the only difference being that the Bata Mazdoor Union, Digha, is mentioned as one of the parties in the dispute in the notification dated 17-9-1955.

4. It is submitted on behalf of the petitioners in M. J. C. Nos. 546 and 590 Of 1955 that the order of the State Government dated 17-9-1959 superseding the two earlier references was illegal and ultra vires. It was submitted by Mr. Shankar Banerji that the State Government had no power to cancel the two previous references made on 8-10-1954 and 15-1-1955, and the notification dated 17-9-1955 making a fresh reference of the dispute to the Industrial Tribunal is ultra vires and beyond the jurisdiction of the State Government. A similar argument has been addressed by Mr. B. C. Ghose appearing on behalf of the petitioners in M. J. C. No. 546 of 1955. In my opinion the argument addressed by learned counsel is correct. Section 10(1), Industrial Disputes Act (Act 14 of 1947) states):

"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 to a Tribunal for adjudication;

Provided that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be

inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

It is manifest that Section 10 grants in express terms a power to the State Government to refer an industrial dispute to a Tribunal for adjudication if "the appropriate Government is of opinion that any industrial dispute exists or is apprehended". There is no express provision either u/s 10 or any other section of the Act empowering the State Government to withdraw a reference after it has been made to the Industrial Tribunal.

The question arises whether by necessary implication the State Government has power to withdraw a reference once it has been made to the Industrial Tribunal. The question must be answered with reference to the contest and the "subjecta materies" of the statute. Section 15 is important in this connection. Section 15 imposes a duty upon the Industrial Tribunal to hold its proceedings expeditiously as soon as a reference is made and to submit its award to the State Government as soon as practicable. Section 15 is in the following terms:

"Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government."

Section 16 requires that the award of the Tribunal shall be in writing and shall be signed by all the members of the Tribunal, as the case may be. Section 17 imposes a duty upon the State Government to publish the award of the Tribunal within a period of one month from the date of its receipt. Section 17A is important.

This section states that the award of the Tribunal shall become enforceable on the expiry of 30 days from the date of its publication u/s 17. There is an exception in a case where the State Government is a party to the dispute and where the State Government is of the opinion that it will be inexpedient on public grounds to give effect to the whole or any part of the award. Section 17A (2) and (3) are in the following terms:

"(2) Where the appropriate Government rejects or modifies any award under the proviso to Sub-section (1), it shall, on the first available opportunity, lay that award together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government, before Parliament.

3. Subject to the provisions of Sub-section (1) the award of a Tribunal shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under Sub-section (1)."

Section 18 is also important. This section provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and on

"all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be records the opinion that they were so summoned without proper cause."

I shall then refer to Section 20(3), which states as follows:

"Proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of dispute for adjudication and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A."

Upon an examination of all the statutory provisions, it is clear that a statutory duty is imposed upon the Tribunal to hold its proceedings expeditiously and submit its award to the State Government as soon as a reference is made to it for adjudication u/s 10. The other sections, namely, Sections 16, 17, 17A and 18, are all peremptory in character. The scheme and purpose of the statute is that once a reference is made by the State Government, the Industrial Tribunal must hold its proceedings and submit its award in an expeditious manner, and upon such an award being made it should be published by the State Government u/s 17 and should normally become enforceable within thirty days of its publication u/s 17A.

It must, therefore be held as a matter of construction that the State Government has no implied power to cancel or withdraw a reference which has already been made to the Industrial Tribunal under the provisions of Section 10. There are also other considerations in support of my view. Section 12(5) states that if on a consideration of the report of the conciliation officer the State Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference, but where the State Government does not make such a reference "it shall record and communicate to the parties concerned its reasons therefor".

The provision of Section 12(5) would be nullified if Section 10 is interpreted to mean that the State Government has an implied power of cancelling the reference which it has already made. If it is held that the State Government has such an implied power, it would not be necessary to record its reasons for cancelling the reference or communicate to the parties concerned such reasons. Such a construction of Section 10 would nullify the effect of Section 12(5) of the statute and ought not to be adopted.

For, it is a well-known rule of interpretation that effect must be given on all parts of the statute and an interpretation should not be adopted which would nullify any portion of the statute or render it ineffective. The proviso to Section 10(1) is also important. Under this proviso, the State Government is bound to make a reference to the Tribunal if the dispute relates to a public utility service and a notice u/s 22 has been given. Section 10(2) similarly imposes a duty upon the State Government to make a reference.

Section 10(2) states that the State Government "shall make a reference" if the parties to the industrial dispute apply in the prescribed manner for a reference of the dispute to a Tribunal and if the State Government is satisfied that the persons applying represent the majority of each party. It is manifest that Section 10(2) and the proviso to Section 10(1) are not merely enabling provisions; they do not merely give a power to the State Government to make a reference in its discretion. On the contrary, these statutory provisions impose a duty upon the State Government to make a reference of the industrial dispute to the Tribunal if the prescribed conditions are satisfied.

Take a case where the State Government has acted under the proviso to Section 10(1) and referred an industrial dispute relating to public utility service to the Industrial Tribunal. Take also a case where the State Government has made a reference of an industrial dispute to the Tribunal u/s 10(2) on the application of the parties concerned. Can it be argued that in these cases also the State Government has an implied power to cancel the reference which it has already made in pursuance of its statutory duty? I do not think this argument can be entertained.

The proviso to Section 10(1) and Section 10(2) impose a duty upon the State Government to make a reference and no power of subsequent cancellation can be implied which would be in derogation of the performance of the statutory duty. Mr. Shanker Banerji also made the submission that in these cases the Industrial Tribunal has taken cognizance of the two previous references and has heard evidence of the parties.

It was pointed out that the Tribunal has already granted eighteen hearings and the Company's witnesses have been examined. It was submitted also that the Company would not have the right of representation through counsel at the hearing of the new reference. Section 36(4) provides that "a party to dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Tribunal". It was contended that the Union would not agree to the representation of the Company through legal practitioners in the proceeding of the new reference.

Mr. Shanker Banerji also pointed out that on 3-6-1955 the Tribunal rejected the application of Sri Fateh Narain Singh for adding the Union as a party to the proceedings. It was argued that the terms of the third reference made by the State Government were exactly the same as the terms of the previous two references made on 8-10-1954 and 15-1-1955. and the only difference was that in the third reference the Union was made a party to the dispute.

It was submitted that the effect of the third reference was not only to cancel the two previous references dated 8-10-1954 and 15-1-1955, but also to wipe out all the proceedings taken before the Tribunal between 13-10-1954 and 14-9-1955 and also to overrule indirectly the order of the Tribunal dated 3-6-1955 refusing to add the Bata Mazdoor Union as a party to the references. I think the argument

of learned counsel is well founded.

In any event, I hold that as a matter of construction the State Government has no implied power to cancel the reference of any industrial dispute once it has been made u/s 10(1) of the Industrial Disputes Act. I have already analysed the relevant statutory provisions and I have shown with reference to the scheme and purpose of the statute that no power of cancelling the reference can be attributed to the State Government as a matter of necessary implication.

5. On behalf of the State of Bihar the learned Advocate-General referred to Section 21, General Clauses Act and made the submission that Section 10, Industrial Disputes Act must be read along with Section 21, General Clauses Act and hence the State Government has power to cancel or rescind the reference that has already been made. Section 21, General Clauses Act is in the following terms:

"Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

I am unable to accept the argument of the learned Advocate-General as correct. It is true that Section 21 grants a power to the State Government to amend, vary or rescind an order which it had already made, but Section 21, General Clauses Act only embodies a rule of construction and the question whether the State Government has power to cancel a previous reference u/s 10, Industrial Disputes Act must be determined with reference to the context; and the subject matter of the particular statute.

I have already examined the question from this aspect and I have shown, for the reasons I have already indicated, that the State Government has no implied power of cancelling a reference which it had already made to the Industrial Tribunal u/s 10, Industrial Disputes Act. I do not, therefore, consider that there is much force in the argument of the learned Advocate General on this point.

6. In the course of his argument, the learned Advocate-General referred to *Minerva Mills Ltd. Vs. Their Workers*, . But the principle of that decision is not, however, directly in point in the present case. The question which arose in that case was whether the State Government could constitute an Industrial Tribunal for a limited period or for deciding a limited number of disputes u/s 7, Industrial Disputes Act.

The question at issue was as to the proper construction of Section 7 and there was no question about! withdrawal of a dispute or cancellation of a reference in that case. The learned Advocate-General referred to the following passage from the judgment of Mahajan J. at pp. 507-508;

"This section lays down the date or the "terminus a quo" for the termination and commencement of the proceedings. It is difficult to see that it in any way cuts

the power of the Government to appoint a tribunal for a limited duration. Reference was also made to the provisions of Section 33 which relate to the conditions of service during the pendency of the proceedings in adjudication. It is provided therein that there shall be no change in the conditions of service of the workmen pending adjudication.

In our opinion, the Labour Appellate Tribunal and the High Court were right in holding that from these provisions it could not be held that it was implicit in Section 7 that the Government could not withdraw a dispute referred to a tribunal or make the appointment of a tribunal for a limited period of time. In our opinion, under the provisions of Section 7, the appropriate Government has ample power of constituting a tribunal for a limited time, intending thereby that its life would automatically come to an end on the expiry of that time.

The contention therefore of Mr. Dapntary that the notification appointing the first tribunal for a period of one year was illegal and that the first tribunal continues to exist is without force. His further contention that the Government could not withdraw the dispute referred to the first tribunal so long as the members of the first tribunal were available and could not hand it over to the second tribunal cannot also be sustained."

But this passage must be, read in the context of the whole judgment, and as I have already pointed out, the question of withdrawal of an industrial dispute did not arise in that case as the tribunal to which the dispute had been referred had ceased to exist. The question at issue was whether the State Government could constitute a new tribunal for adjudicating all those industrial disputes which had not been decided by the first tribunal whose life was for a limited period. I am unable to see how the ratio of this decision has any bearing on the present case.

The learned Advocate-General also referred in support of his argument to the decision of the Supreme Court in *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, . In that case the State Government of Uttar Pradesh had referred an industrial dispute to the Labour Commissioner on 18-2-1950 and directed that the award should be submitted not later than 5-4-1950. The award, however, was made on 13th April and on 26th April the Governor issued a notification extending the time for making the award up to 30-4-1950.

It was held by the Supreme Court that the State Government had no authority whatever to extend the time and the adjudicator became "functus officio" on the expiry of the time fixed in the original order of reference and the award was, therefore, one made without jurisdiction and a nullity. It was further held, that Section 14, U. P. General Clauses Act did not in terms or by necessary Implication give any such power of extension of time to the State Government.

It was argued on behalf of the State Government in that case that the order of 26th April could be supported with reference to Section 21, U. P. General Clauses Act. But the Supreme Court rejected the argument and held that the power of amendment and modification conferred by Section 21, U. P. General Clauses Act

could not be exercised so as to have retrospective operation.

I do not think that the principle of this decision has any application to the present case. As I have already stated, the provision embodied in Section 21, General Clauses Act is only a rule of construction and the question as to the existence of an implied power of cancellation must be determined with reference to the context and the "subjecta materies" of the statute.

7. If I am right in holding that the State Government had no power to cancel the two previous references made on 8-10-1954 and 15-1-1955, it follows that the entire notification dated 17-9-1955 is illegal and ultra vires. It was pointed out by the learned Advocate-General that by this notification dated 17-9-1955 the State Government has not only superseded the two earlier references but has referred a new industrial dispute, namely, a tripartite industrial dispute between the Company, the Union and the employees for adjudication to the Industrial Tribunal.

It was contended by the Advocate-General that the illegal portion of the notification dated 17-9-1955 was severable and no writ need be issued by the High Court for quashing the entire notification. I do not think that the argument of the learned Advocate-General is well founded. In my opinion, the order of cancellation of the two previous references is mixed up and interwoven with the new reference of the tripartite dispute.

I think there is no question of severability in this case. It is not possible, in my opinion, to apply the blue pencil rule in this case and strike off the illegal part of the notification leaving the rest of it intact. For the reasons I have already given, the entire notification of the State Government dated 17-9-1955 must be held to be illegal and ultra vires.

8. In my opinion both the applications should be allowed and a writ in the nature of *certiorari* should be issued quashing the notification of the State Government No. III/D1-1601/55L-13028-dated 17-9-1955. I also consider that a writ in the nature of *mandamus* should be issued commanding respondent 2, namely, the Chairman, Industrial Tribunal, Bihar, to proceed expeditiously with Ref. Case No. 10 of 1954 and Ref Case No. 1 of 1955 and bring them to a conclusion in accordance with law. I would accordingly allow both, these applications with costs. Hearing fee Rs. 200 to be paid by the contesting respondent 1, namely, the State of Bihar.

Das, C.J.

9. I have some doubt with regard to the application of Section 21, General Clauses Act. It is true that that section embodies a rule of construction. If, however, that rule of construction is applied to Section 10, Industrial Disputes Act (Act 14 of 1947). then the State Government has the power to add to, amend, vary or rescind any notification or order issued u/s 10 of the Industrial Disputes Act.

In *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, the Supreme Court held that the relevant section of the U. P. General Clauses Act did not empower the State Government to exercise the power of amendment, etc. with retrospective effect. The learned Advocate-General contended that the decision necessarily implied that the power could be exercised within time, that is, before the adjudication had become "functus officio" on the expiry of the time fixed in the original order of reference. I do not think that the decision of the Supreme Court decides one way or the other what would be the position if the amendment were made within time. (10). Speaking personally, I think that it will depend on the nature of the amendment, etc. My learned brother has referred to certain other provisions of the Industrial Disputes Act, and I do not think that the power of amendment, etc. given by Section 21, General Clauses Act can be so used as to nullify the other provisions of the Industrial Disputes Act.

In the particular case under our consideration, the terms of the third reference made by the State Government are exactly the same as the terms of the two previous references, the only difference being that in the third reference the Union has been made a party to the dispute. I agree with the contention urged on behalf of the petitioners that the effect of the third reference is not only to cancel the two previous references dated 8-10-1954 and 15-1-1955, but also to wipe out all the proceedings taken before the Tribunal between 13-10-1954, and 14-9-1955, and to overrule Indirectly the order of the Tribunal dated 3-1-1955, refusing to add the Bata Mazdoor Union as a party to the reference.

In view of the other provisions of the Industrial Disputes Act, 1947, to which my learned brother has referred, I do not think that the power of amendment, etc. given by Section 21, General Clauses Act, assuming that that section gives such a power to the State Government, can be used in such a way as to nullify the other provisions of the Industrial Disputes Act.

11. I do not go to the length saying that Section 21, General Clauses Act does not apply at all. I am content to base my decision on the limited ground that the power given by Section 21, General Clauses Act cannot be used in such a way as to nullify in effect some of the other provisions of the Industrial Disputes Act, 1947. For these reasons, I agree to the order proposed by my learned brother in these two cases.