

(1973) 01 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No's. 1695, 1030 and 947 of 1971

East India Pharmaceutical Works Ltd. and Others APPELLANT
Vs

Shri G.S. Verma and Another
 Management of Howrah RESPONDENT
Motor Co. Ltd. officer, Vs Labour Court Patna and Others

 M/s. Hindustan General Electrical Corporation Ltd. Vs
Presiding Officer, Labour Court Ranchi and Others

Date of Decision : 24-01-1973

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 10(1), 26, 26(1), 26(2), 28
Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1), 10(1)(c), 10(1)(d)

Citation : (1973) 6 PLJR 324

Hon'ble Judges : Shiveshwar Prasad Sinha, J;S.N.P. Singh, J

Bench : Division Bench

Advocate : K.D. Chatterji and Animesh Chandra Ghose in C.W.J.C. 1595 and 1640 of 1071, Messrs S.B. Sanyal and Choudhary S.N. Mishra in C.W.J.C. 1030 of 1971 and Messrs Ranen Roy, K.D. Prasad, R.K. Das, J. Krishna and Surendra Prasad Sinha No. II in C.W.J.C. 947 of 1971, for the Appellant; Shreenath Singh, Ranen Boy, J. Krishna, S. Ali Ahmad and G.S. Sharma in C.W.J.C. 1995 of 1971; Messrs Ranen Roz, S. Ali Ahmad, Prabhunath Roy and S.K. Jha in C.W.J.C. in 1610 of 1971, Messrs S.K. Jha, Birendra Prasad Sinha, Abhoy Kumar Singh and Tara Kumar Das in C.W.J. C. 1030 of 1971 and Messrs Chandra Shakhar, Man Mohan, J.P. Sinha, Birendra Prasad Sinha (Govt. Pleader No. II) and Abhoy Kumar Singh in C. W. J. C. 947 of 1971, for the Respondent

Final Decision : Allowed

Judgement

S.N.P. Singh, J.—These four writ applications under Articles 226 and 227 of the Constitution of India have been heard together and they are being disposed of by this common judgment as a common question of law is involved in them. C.W.J.C. No. 1595 of 1971 and C.W.J.C. No. 1610 of 1971 arise out of complaint petitions filed before the Labour Court at Patna u/s 26(2) and u/s 28(1), respectively, of the Bihar Shops and Establishments Act, 1953. C.W.J.C. No. 1030

of 1971 and C.W.J.C. No. 947 of 1971 arise out of references made by the Governor of Bihar u/s 10(1)(c) of the Industrial Disputes Act, 1947, to the Labour Courts at Patna and Ranchi, respectively, for the adjudication of certain dispute between the Management and the workmen.

2. Briefly stated the relevant facts of C.W.J.C. Nos. 1595 and 1610 of 1971 are these. Debashis Das Gupta (respondent No. 2 to the two Writ applications) was appointed as a medical representative of East India Pharmaceutical Works Ltd. (petitioner No. 1 of the writ applications). On the 3rd of June, 1968, he was promoted to the post of Sales Supervisor with effect from the 1st of June, 1968. He was required to supervise the work of the medical representatives working in Bihar and his head-quarters was at Patna. He was transferred to Cuttack on the 27th of January, 1971. It is alleged that he did not abide by the order of transfer and filed a suit. In that suit he obtained an order of injunction staying his transfer. The injunction order was vacated on the 16th of March, 1971, against which he preferred an appeal. The appeal was ultimately dismissed. When respondent No. 2 did not abide by the transfer order and join at Cuttack even after the dismissal of the appeal, the Company (petitioner No. 1) issued a letter dated the 27th of April, 1971, terminating the service of respondent No. 2. A copy of that letter has been made Annexure "3" to the two writ applications. It appears that before the order terminating the service of respondent No. 2 had been passed by petitioner No. 1, on the 16th of April, 1971, respondent No. 2 filed an application u/s 28(1) of the Bihar Shops and Establishments Act in the Labour Court at Patna. Sri G. S. Verma (respondent No. 1 of the writ applications) admitted the petition and registered a case which was numbered B. S. E. case 6 of 1971. He issued notices to the petitioners to show cause. On the 20th of May, 1971, respondent No. 2 filed an application u/s 26(2) of the Bihar Shops and Establishments Act, 1953, before the Labour Court at Patna. Sri G. S. Verma (respondent No. 1 of the two writ applications) admitted that application also and registered a case, being B S.E. Case No. 10 of 1971. Notices were issued to the petitioners to show cause. In these two writ applications the jurisdiction of Sri G. S. Verma to entertain the applications filed by respondent No. 2 on the 16th of April, 1971, and on the 20th of May, 1971, has been challenged. Two other points regarding the maintainability of the applications which were filed by respondent No. 2 have been raised.

3. The relevant facts of C. W. J. C. No. 1030 of 1971 are these A dispute arose between the Management of Messrs Howrah Motor Co., Ltd., and Howrah Motor Company Workers' Union relating to the dismissal of one of the workmen. The Governor of Bihar by the notification dated the 10th of September, 1966, in exercise of the powers conferred by Clause (c) of Subsection (1) of Section 10 of the Industrial Disputes Act, 1947, referred the said dispute to the Labour Court constituted by the State Government Notification No. III/D-1-12047/57-L-13149, dated the 26th July, 1957. A copy of the said Notification has been made Annexure "1" to the writ application. That reference was numbered as Reference No. 2 of 1966 and it is still pending. In the writ application the

Management has challenged the jurisdiction of Sri G. S. Verma to deal with that reference.

4. In C. W. J. C. No. 947 of 1971 the petitioner is M/s Hindustan General Electrical Corporation Limited. The material facts of this writ application are these. A dispute arose between the Management and the workmen represented by Karampura Workers Union relating to the discharge of 493 workmen who were in the employment of the petitioner Company at its factory at Karampura. The Governor of Bihar by notification dated the 27th October, 1961, referred the raid dispute u/s 10 (1) of the Industrial Disputes Act to the Labour Court at Ranchi which was constituted in the State Government Notification No. III/DI-12047/571-13149 dated the 26th July, 1957. A copy of the said notification has been made Annexure "1" to the writ application. That reference was numbered as Reference 15 of 1961 and it has not yet been disposed of. It appears that an application was filed by the Management on the 24th of May, 1971, in which the jurisdiction of Shri Duryodhan Dash, the Presiding Officer of the Labour Court at Ranchi, to deal with the reference was challenged on the ground that the Labour Court, as constituted under the notification dated the 26th of July, 1957, referred to above, was no longer in existence. By his order dated the 26th of May, 1971, a copy whereof has been made Annexure ""5" to the writ application, Shri Duryodhan Dash, the Presiding Officer of the Labour Court at Ranchi, rejected the petition filed on behalf of the Management and held that the Labour Court of which he is the Presiding Officer has jurisdiction to deal with the reference. In the writ application the petitioner has challenged the validity of the order of the Labour Court dated the 26th of May, 1971, and has made a prayer for quashing that order.

5. The provision for the constitution of Labour Courts by the appropriate Government was made when the Industrial Disputes Act was amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956). Section 7 of the Act, as amended, provides for the constitution of Labour Courts and it reads as under :

"7. (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless--

(a) he is, or has been, a Judge of a High Court, or--

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

- (c) he has held that the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years; or
- (d) he has held any judicial office in India for not less than seven years; or
- (e) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years."

Section 7A provides for the constitution of one or more Industrial Tribunals by the appropriate Government. Section 7B provides for the constitution of National Industrial Tribunals by the Central Government. Section 7C prescribes certain disqualifications for the Presiding Officer of a Labour Court, Tribunal or National Tribunal.

Sections 7A, 7B and 7C are not relevant for our purpose. In Section 8 provisions have been made for filling of vacancies in the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal and it reads as follows:

"If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then in the case of a National Tribunal, the Central Government and in any other case, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled."

Section 33B empowers the appropriate Government, inter alia, to transfer proceedings from one Labour Court to another Labour Court. That section reads as under:

"(1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal, and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at Which it was so transferred :

Provided that where a proceeding u/s 33 or Section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of Sub-section (1), any Tribunal or National Tribunal, if so authorised by the appropriate Government, may transfer any proceeding u/s 33 or Section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which

the proceeding is so transferred shall dispose of the same."

6. Now I would refer to the relevant provisions of the Bihar Shops and Establishments Act, 1953 (hereinafter called "the B. S. E. Act") and the Bihar Shops and Establishments Rules, 1955 (hereinafter called "the B. S. E. Rules")- Sub-sections (I) and (2) of Section 26 of that Act provide as follows :

""(i) No employer -shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than six months except for a reasonable cause and without giving such employee at least one month's notice or one month's wages in lieu of such notice :

Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) Every employee, so dismissed or discharged, may make a complaint in writing, in the prescribed manner, to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely :--

- (i) there was no reasonable cause for dispensing with his service; or
- (ii) no notice was served on him as required by Sub-section (I): or
- (iii) he had not been guilty of any misconduct as held by the employer."

Sub-section (1) of Section 28 provides as follows :

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employee, or any payment of wages has been delayed, or any sum is otherwise due from the employer to the employee, such employee, or any legal practitioner or any authorised agent or any officer of a registered trade union or any Inspecting Officer may make an application in such manner, within such time, and to such authority as may be prescribed for a direction under Sub-section, (2)."

It is not necessary to refer to the other sub-sections of Section 28 as they are not relevant for our purpose. Rule 21 of the B. S. E. Rules is headed "Complaint under Sub-section (2) of Section 26. Sub-rule (1) rule 21, which is relevant for our purpose, reads thus;

"Any employee aggrieved by an order of dismissal or discharge u/s 26, may make a complaint to a Labour Court constituted under the Industrial Disputes Act, 1947 (14 of 1947) or to an officer authorised in this behalf by a notification in the official gazette, either himself or through an officer of a registered trade union, Such Court or officer shall entertain the complaint petition and hear the same in the manner prescribed in Sub rules (4) to (8)".

Rule 22 is headed "Application u/s (1) of Section 28". Sub rule (1) of that rule,

which is only relevant for our purpose, provides as follows :

"An application under Sub-section (1) of Section 28 shall be made to a Sub-divisional Magistrate or an Asstt. Commissioner of Labour of the Local area or the Presiding Officer of the Labour Court mentioned in column 2 of the Schedule hereto annexed having their respective jurisdiction as specified in column 4 of the said schedule or an Officer authorised in this behalf by notification in the Official gazette within six months from the date on which the deduction from wage was made or from the date on which the payment of wages was due to be made as the the case may be :

Provided that an application may be admitted after the period of six months if the applicant satisfies the authority that he had sufficient cause for not making the application within such period."

(Schedule has been excluded)

7. In order to appreciate and decide the point of law involved in the four writ applications, it is necessary to give a history relating to the constitution of Labour Courts in the State of Bihar. For the first time by Notification No. IH/D1-12015/57-L-4664, dated the 12th March, 1957, the Governor of Bihar, in exercise of the powers conferred by Section 7 of the Industrial Disputes Act, 1947 (hereinafter to be called "the Act"), constituted a Labour Court for the State of Bihar of which Shri Ali Hasan, a Member of the Bihar Superior Judicial Service, was appointed the Presiding Officer. By notification No. III/D1-12047/57 L-13149, dated the 26th July, 1957, the Governor of Bihar, in exercise of the powers conferred by Section 7 of the Act, and "in supersession of Government Notification No. III/DI-12015/57 L & E 4664, dated the 12th, 1957", constituted three Labour Courts, namely, Labour Court, Tirhut Division, with head-quarters at Muzaffarpur; Labour Court, Chotanagpur Division, with head-quarters at Ranchi and Labour Court, Patna Division, with head-quarters at Patna. The local limits of jurisdiction of each of the three Labour Courts were specified in the Schedule. It may be stated here that the local limits of jurisdiction of a particular Labour Court were not fixed in accordance with the territorial jurisdiction of a Division. For instance, within the local limits of jurisdiction of the Labour Court, Tirhut Division, the districts of Purnea and Saharsa of Bhagalpur Division, and Khagaria and Begusarai Sub-divisions of Monghyr district in Bhagalpur Division were included. It is also important to note that the Presiding Officers of the Labour Courts were not appointed by the said notification. A copy of the said notification has been made Annexure "2" to C. W.J.C No. 947 of 1971. By Notification No. III/D1-1204/67 L & E.636 dated the 30th of January, 1967, the Governor of Bihar, in exercise of the powers conferred by Section 7 of the Act and "in supersession of Government Notification No. III/D1-12047/57 L-13149 dated 26.7.1957", constituted three Labour Divisions, namely, Labour Court Tirhut Division, Muzaffarpur; Labour Court, Chotanagpur Division, Ranchi and Labour Court, Patna Division, Patna. A copy of the said notification has been made Annexure "2" to C. W. J. C. No. 1030 of 1971 and Annexure "6"" to C. W.

J. C. Nos. 1595 and 1610 of 1971. By this notification the only alteration which was made was in respect of the local limits of the jurisdiction of the Labour Court, Chotanagpur Division, and the Labour Court, Patna Division. In this notification also the Presiding Officers of the three Labour Courts were not appointed. By notification dated the 12th of April, 1971, the Governor, of Bihar, in exercise of the powers conferred by Section 7 of the Act and "in supersession of Government Notification No. III/D1-1204/67 L & E-636 dated the 30th of January, 1967", constituted four Labour Courts, namely, (1) Labour Court, Patna Division, with head-quarters at Patna; (2) Labour Court, Tirhut Division, with headquarters at Muzaffarpur; (3) Labour Court, Chotanagpur Division, with headquarters at Ranchi : and (4) Labour Court, Bhagalpur Division, with headquarters at Bhagalpur. A copy of the said notification has been made Annexure "4" to C. W. J. C. No. 1030 of 1971 and Annexure "8" to C. W. J. C. Nos. 1595 and 1610 of 1971. By this notification also the local limits of the jurisdiction of a particular Labour Court were not fixed in accordance with the territorial jurisdiction of a Division. The Presiding Officers were also not appointed for the four Labour Courts by this notification. On the 26th of October, 1971, the Governor of Bihar issued a notification, in exercise of the powers conferred by Section 7 of the Act, which reads as under:

"In exercise of the powers conferred by Section 7 of the Industrial Disputes Act, 1947 (XIV of 1947) and in modification of Labour and Employment Department Notification No. III/DI-1204/67 L & E 635 dated 30th January, 1967, and in cancellation of Labour and Employment Department S. O. No. 346 dated 12th April, 1971, the Governor of Bihar is pleased :

(i) To constitute the Labour Court, Bhagalpur Division with its headquarters at the Bhagalpur and local limits of jurisdiction of extending to Purnea, Shaharsa, Monghyr, Bhagalpur and Santbal Parganas districts of Bhagalpur Division for the jurisdiction of the industrial disputes relating to any matter specified in the second schedule to the said Act and for performing such other functions as may be assigned to the said Court under the said Act, and :

(ii) to re-assign the following local limits of jurisdiction of the Labour Court constituted in Notification No. III/D1-1204/67 L & E 635 dated the 30th January, 1967.

Sl. No. Labour Court

Head-Quarters

Local limits of jurisdiction

1.

Labour Court Tirhut Division.

Muzaffarpur

Saran, Champaran, Muzaffarpur and Darbhanga districts of Tirhut Division.

2.

Labour Court Chotanagpur Division.

Ranchi

Ranchi, Palamau, Singhbhum and Dhanbad districts of Chotanagpur Division.

3.

Labour Court Patna Division.

Patna

Patna, Gaya and Shahabad districts of Patna Division and Hazaribagh district of Chotanagpur Division.

8. In all these four writ applications the common point of law which has been raised may be stated as follows. The issuance of a notification superseding an earlier notification and constituting new Labour Courts u/s 7 of the Act resulted in abolition of the Labour Court constituted by the earlier notification and those earlier Labour Courts ceased to exist from the date of the subsequent notification. The new Labour Courts constituted by the fresh notifications would not have the jurisdiction to deal with the references u/s 10(1) of the Act which were made to the Labour Courts constituted by the earlier notifications. Similarly, the new Labour Courts would not have the jurisdiction to deal with the complaints filed u/s 26(1) or u/s 26(2) of the B. S. E. Act which were made before the Labour Courts constituted under the earlier notifications.

9. As already stated, in the notifications dated the 26th July, 1957, 30th January, 1967, and the 12th of April, 1971, the word ""supersession" has been used relating to the previous notification. It was submitted by Learned Counsel appearing for the petitioners in the four writ applications that the word ""supersession" in the context in which it has been used in the notifications means cancellation and by using that word the clear intention was to put an end to the Labour Court constituted by the previous notification.

10. Mr. Shreenath Singh appearing for the State of Bihar in C.W.J.C. No. 1595 of 1971 and Mr. S. Jha appearing for the State of Bihar in C.W.J.C. No. 1030 of 1971 and C.W.J.C. 1610 of 1971 submitted that the words "supersession" and "cancellation" are not synonymous and in the notifications dated the 26th of July, 1957, dated the 30th of January, 1967, and dated the 12th of April, 1971, the word "super-session" should not be given the meaning of "cancellation". According to Learned Counsel appearing for the State, the new notification dated the 30th of January, 1967, did not create new Labour Courts. By that notification only some alteration was made with regard to the local limits of the jurisdiction of the three Labour Courts of Tirhut Division, Chotanagpur Division and Patna Division, which had been constituted under the Notification dated the 26th of July, 1957. By notification dated the 12th of April, 1971, only one Labour Court for Bhagalpur Division at Bhagalpur was created and as a result thereof

alteration in the local limits of the jurisdiction of the Labour Courts of Tirhut Division, Chotanagpur Division and Patna Division was made. It is difficult to accept this contention of Learned Counsel appearing for the State. The use of the words ""in supersession of Government notification. III/DI-12047/ 57 L-13149 dated S6.7.1957, the Governor of Bihar is pleased to constitute the Labour Courts specified in column 2 of the Schedule hereto annexed in the notification dated the 30th of January, 1967, is indicative of the fact that the Government intended by the notification to abolish the Labour Court which had been constituted by the earlier notification dated the 26th of July, 1957. The use of similar words in the notification dated the 12th of April, 1971, is indicative of the fact that Government intended by the new notification to put an end to the Labour Courts which had been constituted by the notification dated the 30th of January, 1967. This intention of the Government is also clear from the notification dated the 26th of October, 1971, which has been quoted in extense. By that notification the Government sought (1) to revise the three Labour Courts, which had been created by the notification dated the 30th of January, 1957, by cancelling the notification dated the 12th of April, 1971; (2) to constitute a Labour Court for Bhagalpar Division; and (3) to re-assign the local limits of the jurisdiction of the Labour Courts of Patna Division, Chotanagpor Division and Tirhut Division. Had the intention of the Government been only to make alteration in the local limits of the jurisdiction of the three Labour Courts created by the notification dated the 30th of January, 1967, by the notification dated the 12th of April, 1971, there was no necessity for cancelling the notification dated the 12th of April, 1971. It is significant to note that the word "modification" has not been used in respect of the notification dated the 30th of January, 1967, which was sought to be revised, because changes in the local limits of the jurisdiction of the three Labour Courts under that notification had been made. If the intention of the Government had been only to make alteration in the jurisdiction of the three Labour Courts constituted by the previous notification, the Government would have used the word ""modification" in the notifications dated the 30th of January, 1967, and dated the 12th of April, 1971, for the word ""supersession", as has been used in the Notification dated the 26th of October, 1971. I, therefore, arrive at the conclusion that the word "supersession" in the notifications dated the 26th of July, 1957, dated the 30th of January, 1967, and dated the 12th of April, 1971, has been used in the sense of "cancellation".

11. Having arrived at the above conclusion, I will now proceed to consider the most important question, namely, whether the appropriate Government has power and jurisdiction to abolish a Labour Court which has been duly constituted u/s 7 of the Act. The answer to this question will depend upon the answer to the question whether in the context of the scheme of the Act its provisions, the appropriate Government can abolish a Labour Court by virtue of the provisions contained in Section 21 of the General Clauses Act. In the case of (I) D.N. Ganguly and Others Vs. State of Bihar and Others, it was held that the State

Government has no power to cancel or withdraw a reference which had already been made to the Industrial Tribunal under the provisions of Section 10 of the Act. That case went up in appeal to the Supreme Court and the Supreme Court in that case reported in *The State of Bihar Vs. D.N. Ganguly and Others*, upheld the decision of the High Court and held that the Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made u/s 10 (1) of the Act. It was observed in that case as follows :

"We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Disputes Act."

Though in the case of *D.N. Ganguly* the point, which is under consideration, was not involved, the decision in that case that the provision of Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Act supports the view that the Act being a self-contained Act, there is no room for the application of Section 21 of the General Clauses Act, If the provisions of Section 21 of the General Clauses Act cannot be applied then in absence of any specific provision in the Act, the State Government cannot abolish a Labour Court once constituted u/s 7 of the Act till awards are made in the pending references. This view is fully supported by a Bench decision of the Calcutta High Court in the case of (2) *Shellac Industries Ltd. Vs. Their Workmen*, . In that case the facts were these. A dispute as between the Management of *M/s Shellac Industries Ltd.* and their workmen represented by *Shellac Industry's Workers' Union* had arisen and that dispute was referred by the Government of West Bengal to the 1st Labour Court of West Bengal constituted on the 5th April, 1957. On the 11th of July, 1960, that Labour Court was abolished by a notification. On the 19th of July, 1960, the Government of West Bengal referred the same dispute to the 7th Industrial Tribunal constituted under a notification dated the 21st of June, 1960. The 7th Industrial Tribunal gave the award in favour of the workers. The Company being aggrieved filed an application under Article 227 of the Constitution. It was contended on behalf of the Company that the State was not competent to supersede the prior order of reference dated the 16th day of April, 1959, to the First Labour Court and consequently the reference u/s 10(1)(d) of the very same dispute to the 7th Industrial Tribunal was illegal and without jurisdiction. The learned Judges of the Calcutta High Court held, upon a consideration of a number of decisions, that the Industrial Tribunal continues to exist till an award is made subject to the possibility of intervention on the grounds mentioned in Sections 8 and 33B and consequently there is no express power in the State Government to abolish a tribunal when a dispute is referred to it u/s 10(1)(d) till it gives its award. It was observed in Paragraph 24 of the judgment as follows :

"Hence, a tribunal cannot be abolished merely because the State Government

chooses to put an end to it when a reference is pending before it for the State cannot do indirectly under the guise of an order of supersession what is not permissible to it expressly or impliedly under the Act. Hence, in my view in law the State was incompetent and had no jurisdiction to abolish the First Tribunal and thereafter refer the same dispute to the 7th Tribunal and consequently the reference of the very same dispute u/s 10(1)(d) to the 7th Industrial Tribunal was clearly illegal and without jurisdiction and accordingly the award of the 7th Industrial Tribunal is without jurisdiction and void."

In paragraph 39 of the judgment exceptional circumstances in which a reference of the same dispute to another Tribunal can be made were indicated. Paragraph 39 of the judgment reads as under:

"In my opinion, the order appointing a fresh tribunal u/s 7(1) and referring the same dispute to a different Tribunal u/s 10 no doubt can be made when the Tribunal already constituted by reason of something inherent in it such as the death or resignation of the members of the tribunal or by some subsequent events such as lapse of time ceases to exist. This is however a different thing from a case where there is no retirement, no case of vacancy and no case of application of Section 8, but a case where a Tribunal was abolished when a reference was pending before it though it is not permissible under the Act. Hence, the notification or order abolishing the First Tribunal and the consequent reference of the same dispute u/s 10 (1) to the Tribunal were clearly without jurisdiction."

Learned Counsel appearing for the petitioners in the four writ applications submitted before us that the view taken by Calcutta High Court in the case, referred to above, is not correct. Reliance was placed on a decision of the Supreme Court in the case of (3) Ram Sahib Ramadaya Ghasiram Oil Mills and Partnership Firm V. The Labour Appellate Tribunal and another AIR 1964 SC 567). The facts of that case were these. A Tribunal had been constituted consisting of one Mr. Kurian u/s 7 of the Act on May 13, 1955, and a dispute between the workmen and employers of Rai Sahib Rimdayal Ghasiram Rice, Ginning and Oil Mills, Peddapally was referred. Shortly after the Tribunal was constituted and reference was made to that Tribunal, Mr. Kurian retired in consequence of which the Government of Hyderabad made a notification on June 2, 1955, which read as follows :

"In exercise of the powers conferred by Sub-section (1) of Section 7 of the Industrial Disputes Act, 1947 (XIV of 1947) and in supersession of the Labour Department Notification No. B 18954/134 dated 15.10.1954 the Rajpramakh hereby constitutes an Industrial Tribunal consisting of Shri Bhikaji Patil as its sole member for the adjudication of industrial disputes in accordance with the provisions of the said Act, with immediate effect."

One of the contentions which had been raised on behalf of the Management before the Tribunal was that it had no jurisdiction to adjudicate upon the dispute.

The Tribunal over-ruled that objection and other objections and made an order in favour of the workmen. An appeal was preferred by the Management from the decision of the Tribunal before the Labour Appellate Tribunal, Bombay. The appeal having been dismissed, the Management preferred a writ petition before the High Court of Bombay which was rejected in limine. Thereupon the Management filed an appeal to the Supreme Court. Before the Supreme Court two points were raised, one of the points being that the Industrial Tribunal consisting of Mr. Patil had no jurisdiction to adjudicate upon the dispute.

That contention was upheld and it was observed as follows :

"Sub-section (1) of Section 7 as it then stood empowered the appropriate Government to constitute one or more Industrial Tribunals for the adjudication of Industrial disputes in accordance with the provisions of the Act. Such a Tribunal was to consist of such number of members as the appropriate Government thought fit. Sub-section (2) of Section 8 of the Act, as it then stood, provided that where a Tribunal consists of one person only and his services ceased to be available the appropriate Government may appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. That being the legal position, the appropriate thing for the Government to do was to take action under Sub-section (2) of Section 8 after Mr. Kurian's services ceased to be available. Instead of doing that the Government took action u/s 7 Sub-section (1) of the Act "in supersession" of its previous notification and constituted a fresh Industrial Tribunal consisting of Mr. Patil as its sole member. We need not consider here whether the old Tribunal still continued to exist and there was merely a vacancy therein and therefore there was no occasion to constitute a fresh Tribunal under Sub-section (1) of Section 7 because, having constituted a fresh Tribunal, the Government failed to refer the dispute in question to it under Sub-section (1) of Section 10 of the Act. Apparently the law-advisers and the Government thought that a mere notification under Sub-section (1) of Section 7 would meet the requirements of law and there was no necessity to make a fresh notification u/s 10(l)(c) referring the particular dispute for adjudication to the Tribunal. No doubt, Sub-section (1) of Section 7 empowers the Government to constitute a Tribunal for adjudicating upon industrial disputes in accordance with the provisions of the Act. But merely constituting a Tribunal for such a purpose is not enough. It has also to act u/s 10 and make a specific reference to it of each dispute for adjudication. Without such a reference the Tribunal does not get any jurisdiction to adjudicate upon any dispute. On this short ground, the appeal must be allowed."

This case was considered in the case of (2) Shellac Industries Ltd. Vs. Their Workmen, by the Calcutta High Court and it was observed that the case was of no help to the respondent. From the observation of the Supreme Court, which I have referred to above, it is clear that the Supreme Court did not go into the question whether the old Tribunal continued to exist or not after the issue of the fresh notification. In my opinion, there is nothing in the decision of the Supreme

Court which is contrary to the view taken by the Calcutta High Court in the case referred to above.

12. Having given my careful consideration to the question, I am of the opinion that the appropriate Government has no power or jurisdiction to abolish a Labour Court duly constituted u/s 7 of the Act so far as the pending references and pending cases are concerned. The cancellation of a notification by which a Labour Court has been constituted by a subsequent notification and constitution of a fresh Labour Court by that notification would not result in the abolition of the Labour Court constituted under the previous notification so far as the pending references, and other pending cases are concerned. The new notification will operate from the date of that notification and the references made and case filed on or from the date of the new notification will only be taken cognizance of by the new Labour Court or Courts, as the case may be, constituted under the fresh notification.

13. As complications have been created by the Government by issuing Notification No. SO. 913, dated the 26th of October, 1971, it becomes necessary to consider the question as to what was to the effect of that notification. As already stated, by this notification the Government sought to revise the three Labour Courts, which had been constituted by the notification dated the 30th of January, 1967, to constitute a new Labour Court for Bhagalpur Division and to re-assign the local limits of the jurisdiction of the Labour Courts of Patna Division, Chotanagpur Division and Tirhut Division, which had been constituted by the notification dated the 30th of January, 1967. Since the notification dated the 12th of April, 1971, was cancelled, the intention of the Government was further to put an end to the existence of the Labour Courts created by that notification. It was rightly submitted by Mr. K. D. Chatterji appearing for the petitioners in C. W. J. C. Nos. 1959 of 1971 and 1610 of 1971 that it was beyond the power of the State Government to give retrospective effect to the notification. The effect of the notification was, therefore, as follows :

(1) The three Labour Courts of Patna Division, Chotanagpur Division and Tirhut Division, which had been constituted by the notification dated the 30th of January, 1967, got the jurisdiction to take cognizance and to deal with the new references and cases from the date of the notification, that is, the 26th of October, 1971, in respect of the areas assigned to them by the notification.

(2) That the four Labour Courts created by Notification No. S. O. 346 dated the 12th of April, 1971, ceased to have jurisdiction to take cognizance and/or to deal with the new references and cases from the date of the notification.

(3) A new Labour Court of Bhagalpur Division at Bhagalpur was created having jurisdiction to take cognizance of references made to it and the cases instituted before it from the date of the notification.

It is made clear that as a result of the notification, the four Labour Courts which had been constituted by Notification No. S. O. 346 dated the 12th of April, 1971,

were not abolished so far as the pending references made to them and pending cases instituted before them from the 12th April to the 25th October, 1971, were concerned.

14. Having given my decision on the common question of law raised the four writ applications, I now proceed to consider each of the four cases separately.

15. As already stated, in C.W.J.C. No. 947 of 1971 thereference u/s 10(1) of the Act to the Labour Court at Ranchi, which had been constituted by the notification dated the 26th of July, 1957, was made. That reference, which was numbered as Reference 15 of 1961, is still pending. It is an admitted position that Shri Duryodhan Das was not appointed the Presiding Officer of the Labour Court, Ranchi, which had been constituted by the notification dated the 26th of July, 1957. As stated in paragraph 15 of the writ application, Shri Duryodhan Das was appointed as the Presiding Officer of the Labour Court, Ranchi which was constituted under the notification dated the 30th of January, 1967. A copy of notification has been made Annexure "3" to the writ application. It must, therefore, be held that Shri Duryodhan Dash had no jurisdiction to deal with Reference No. 15 of 1961 which was made to the Labour Court at Ranchi constituted by the notification dated the 26th of July, 1957. The view taken by Shri Dash in his order dated the 26th of May, 1971 (Annexure 5 to the writ application) that he has jurisdiction to deal with the reference is erroneous. The writ application, therefore, must succeed and the order (Annexure 5) must be quashed.

16. In the result, this writ application is allowed and the order (Annexure 5) is quashed. There will be no order as to costs.

17. I would like to make it clear that to obviate the difficulties there are two courses open to the Government. The Government may appoint a Pre-siding Officer of the Labour Court at Ranchi which was constituted by the notification dated the 26th of July, 1957, u/s 8 of the Act so that the pending references, etc., including Reference No. 15 of 1961 may be disposed of by that Court. The Government may adopt the alternative course of withdrawing the pending references including Reference No. 15 of 1961 from the Labour Court which was constituted at Ranchi by the notification dated the 26th of July, 1957, and transferring the pending references to a Labour Court which has a Presiding Officer and is functioning u/s 33B of the Act.

18. C. W. J. C. No. 1030 of 1971 must also be allowed on similar grounds. As already stated, the reference in that case u/s 10 (I) of the Act was made to the Labour Court at Patna which was constituted by the notification dated the 26th of July, 1957, and that reference was numbered as Reference 2 of 1966. That reference is still pending. As stated in paragraph 5 of the writ application, a notification, dated the 6th of February, 1970", was made u/s 8 read with Section 7 (2) of the Act appointing Shri Gopalji Sahay Verma, Subordinate Judge, as the Presiding Officer, Labour Court Patna. A copy of the notification has been made

Annexure "3" to the writ application. Annexure "3" shows that Sri Gopalji Sahay Verma was appointed as the Presiding Officer of the Labour Court which was constituted under the notification dated the 30th of January, 1967. He has, therefore, no jurisdiction to deal with the references including Reference No. 2 of 1966 which were made to the Labour Court constituted under the notification dated the 26th of July, 1957, In this writ application a copy of the order-sheet has been made Annexure "5" to the writ application. The orders contained in Annexure "5" have been passed by Sri G. S. Verma. A prayer has been made for quashing those orders.

19. In the result, this application is allowed and the orders passed by Sri G. S. Verma, as contained in Annexure "5" are quashed. There will be no order as to costs.

20. In this case also the Government may adopt either of the two courses which I have indicated in C. W. J. C. No. 947 of 1971 to obviate the difficulties.

21. Now I proceed to consider C W.J. C. No. 1595 of 1971 and C.W. J. C. No. 1610 of 1971. As already stated, in C. W. J. C. No. 1610 of 1971, Debashis Das Gupta (respondent No. 2) filed an application on the 16th of April, 1971, before Sri Gopalji Sahay Verma, the Presiding Officer of the Labour Court, Patna (respondent no, 1.) That application was registered as B. S. E. case No. 6 of 1971. As provided under Sub-rule (1) of rule 22 of the B. S. E. Rules, which I have quoted in extenso, the application under Sub-section (1) of Section 28 of the B. S. E. Act has to be made to a Subdivisional Magistrate or an Assistant Commissioner of Labour of the local area or the Presiding Officer of the Labour Court mentioned in column 2 of the Schedule. In column 2 of the Schedule the Presiding Officer of the Labour Court, Patna, is mentioned. Annexure "5" to the application, which is a copy of the order-sheet of the case shows that cognizance on the application filed by respondent No. 2 was taken by Shri G. S. Verma on the 16th of April, 1971, and he issued notices to show cause to the opposite party (the petitioners of the writ application). As I have already stated, while dealing with C. W. J. C. No. 1030 of 1971, Sri Gopalji Sahay Verma was appointed as the Presiding Officer of the Labour Court, Patna, constituted under the notification dated the 30th of January, 1967.

22. As already stated, C. W. J. C. No. 1595 of 1971 arises out of an application filed by respondent No. 2 u/s 26(2) of the B. S. E. Act before the Labour Court, Patna, on the 20th of May, 1971. As provided under Sub-rule (1) of rule 21 of the B. S. E. Rules, which I have quoted in extenso, any employee aggrieved by an order of dismissal or discharge can make a complaint u/s 26 to a Labour Court constituted under the Act or to an officer authorised in this behalf by a notification in the official gazette. It appears from the order-sheet (Annexure 5 to the application) that Shri G. S. Verma took cognizance of the application on the 20th of May, 1971, and on the 15th of June, 1971, he issued notices to the opposite parties (the petitioners of this writ application) to show cause.

23. Mr. K. D. Chatterji, Learned Counsel appearing for the petitioners in the two writ applications, submitted that Sri G. S. Verma had no jurisdiction to entertain the two applications as the Labour Court constituted by the notification dated the 30th of January, 1967, of which he was the Presiding Officer was abolished by the notification dated the 12th of April, 1971. I have already held that the appropriate Government has no jurisdiction to abolish a Labour Court which was duly constituted so far as the pending references and pending cases were concerned. I have also held that the new notification will operate from the date of the notification and the references made and cases instituted on or from the date of the notification will only be taken cognizance of by the new Labour Courts. Thus, from the date of the notification, that is, from the 12th of April, 1970 a new Labour Court at Patna was brought into existence and as a result of that notification the Labour Court constituted by the notification dated the 30th of January, 1967, ceased to have jurisdiction to entertain the references made u/s 10(1) of the Act and cases filed from the 12th April, 1967, to the 25th October, 1971. As a result of Notification No. S. O. 913, dated the 26th October, 1971, the Labour Court constituted by the notification dated the 30th of January, 1967, got back the jurisdiction to entertain the references made u/s 10(1) of the Act and cases filed on and from the 26th October, 1971. As both the applications under the B. S. E. Act were filed after the 12th of April, 1971, the Labour Court at Patna, which had been constituted by the notification dated the 12th of April, 1971, had only the jurisdiction to take cognizance of the applications. No notification was produced before us to show that Shri G. S. Verma was appointed as the Presiding Officer of the Labour Court constituted by the notification dated the 12th of April, 1971. It was submitted by Mr. Chatterji that as an application under Sub-section (1) of Section 28 has to be made before the Presiding Officer of a Labour Court and as Sri Verma had not been appointed the Presiding Officer of the Labour Court which was constituted by the notification dated the 12th of April, 1971, he had no jurisdiction to entertain that application u/s 28(1) of the B. S. E. Act. He also contended that Shri Verma had no jurisdiction to entertain the complaint u/s 26 (2) of the B. S. E. Act which was filed by respondent No. 2 on the 20th of May, 1971. The contention of Mr. Chatterji with regard to the application filed u/s 28 (1) of the B. S. E. Act has to be accepted in view of the clear provision in Rule 22 (i) of the B. S. E. Rules that an application u/s 28 (1) has to be filed before the Presiding Officer of the Labour Court. As Sri Verma was not the Presiding Officer of the Labour Court constituted under the notification dated the 12th of April, 1971, he had no jurisdiction to entertain the application. The complaint filed u/s 26(2) of the B. S. E. Act, however, stands on a different footing. As I have already stated, the complaint under Sub-section (2) of Section 26 can be filed before the Labour Court constituted under the Act, as provided under Rule 21 (1) of the B. S. E. Rules. The complaint will be deemed to have been filed before the Labour Court which was constituted by the notification dated the 12th of April, 1971. Of course, no Presiding Officer had been appointed for that Court. As Sri G. S. Verma had not been appointed the Presiding Officer of the Labour Court constituted under the notification dated the 12th of April, 1971,

he had obviously no jurisdiction to entertain the complaint. In that view of the matter, it must be held that the order dated the 20th of May, 1971, taking cognizance by Sri Verma was without jurisdiction.

24. In C. W. J. C. No. 1610 of 1971 it is held that the application by respondent No. 2 u/s 28 (1) of the B. S. E. Act was not filed before the competent authority prescribed under Rule 22 (i) of the B. S. E. Rules. In that writ application one more point was urged on behalf of the petitioners, namely, that the petition u/s 28 (1) of the B. S. E. Act filed by respondent No. 2 was not maintainable as respondent No. 2 was not an employee of the establishment as defined in the Act. The question whether respondent No. 2 is an employee of an establishment, as defined in the Act, is a pure question of fact. The petitioners have not produced sufficient materials on the basis of which it can be held by this Court that respondent no 2 was not an employee of an establishment within the meaning of the B. S. E. Act. That point, therefore, cannot be decided. The application must succeed, however, on the first point, namely, that the application by respondent No. 2 u/s 28(1) of the B. S. E. Act was not filed before the competent authority prescribed under Rule 22 (1) of the B. S. E. Rules.

25. In the result, this writ application is allowed and the entire proceeding (B. S. E. Case No. 6 of 1971) is quashed, There will be no order as to costs.

26. In C.W.J.C. No. 1595 of 1971 two more points were urged on behalf of the petitioners. It was submitted that the complaint petition u/s 26 of the B. S. E. Act filed by respondent No. 2 was not maintainable as respondent No. 2 was not an employee of an establishment within the meaning of the said Act. Secondly it was urged that the complaint u/s 26 of the B. S. E. Act was not maintainable because it was a case of simple termination of service of respondent No. 2 and not a case of dismissal or discharge. Both these questions being questions of fact cannot be decided in the writ application in absence of sufficient materials to establish those facts. The petitioners have not produced sufficient materials to establish those facts. Apart from that, even there is no proper verification of the application with regard to the statements made in the various paragraphs of the application. It is, therefore, not possible for this Court to go into those questions of fact. This writ application, however, has to be allowed on the ground that Sri Verma had no jurisdiction to take cognizance of the complaint filed by respondent No. 2 u/s 26 (2) of the B. S. E. Act as he was not the Presiding Officer of the Labour Court constituted under the notification dated the 12th of April, 1971.

27. As under Sub-rule (1) of the B. S. E. Rules, a complaint u/s 26(2) has to be filed not before a Presiding Officer of the Labour Court but before a Labour Court, I would hold that there was a proper filing of the complaint u/s 26(2) of the B. S. E. Act by respondent No. 2 before the Labour Court constituted by the notification dated the 12th of April, 1971, It is made clear that if the Presiding Officer is appointed by the Government for the Labour Court at Patna constituted by the notification, he will have jurisdiction to take cognizance of the complaint

which was duly filed by respondents No. 2 on the 20th of May, 1971, u/s 26(2) of the B, S. E. Act.

28. At this stage I would deal with a point which was urged by Mr. K. D. Chatterji. According to the submission of Learned Counsel, a Labour Court cannot be said to be constituted unless the Presiding Officer for the said Court is appointed, As no Presiding Officer of the Labour Court at Patna, which was created by the notification dated the 12th of April, 1971, was appointed, there was no constitution of the Labour Court. It is difficult to accept this contention. Section 7(1) of the Act empowers the State Government to constitute one or more Labour Courts by notification in the Gazette. According to Section 7(2) of the Act, a Labour Court shall consist of one person only to be appointed by the appropriate (Government. In my opinion, Section 7(1) of the Act is self-contained so far as the constitution of the Labour Court is concerned. As soon as the notification u/s 7(1) is issued, a Labour Court is constituted. The Government may take time to appoint a person as the Presiding Officer of the Labour Court but the appointment of the Presiding Officer cannot be held to be a part of the constitution of the Labour Court. If the contention of Mr. K. D. Chatterji be accepted as correct, whenever a vacancy occurs in the office of the Presiding Officer of the Labour Court, that Labour Court will cease to exist. That, however, is not the scheme of the Act. As provided u/s 8 of the Act, if for any reason a vacancy occurs in the office of the Presiding Officer of a Labour Court, the appropriate Government shall appoint another person to fill the vacancy. For the foregoing reasons I do not find any substance in the contention which has been raised by Mr. Chatterji. In the result, this writ application (C W. J. C. No. 1595 of 1971) is allowed and the orders dated the 20th of May, 1971, and the 15th of June, 1971, passed by Shri G. S. Verma are quashed. There will be no order as to costs.

S.P. Sinha, J.

I agree to the conclusion.