
(1983) 09 BOM CK 0017

In the Bombay High Court

Case No : Spl. C.A. No. 67/B and 97B to 100B of 1980

General Superintendence Company of India Ltd.

APPELLANT

Vs

General Secretary, Goa Dock Labour Union and others

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 3, 7, 8

Citation : (1984) 86 BOMLR 30 : (1984) 1 LLJ 56 : (1983) MhLj 938

Hon'ble Judges : R.A. Jahagirdar, J;G.D. Kamat, J

Bench : Division Bench

Judgement

Jahagirdar, J.—This is a group of five petitions which are begin heard together and are beginning disposed of by this common judgment and order. These petitions seek to challenge an order passed by the Central Government Industrial Tribunal No. 1 at Bombay, hereinafter referred to as "the Tribunal", on 14th July, 1980 by which the Tribunal rejected the contention raised on behalf of the petitioners that the Tribunal had no jurisdiction to proceed with the hearing of the references.

2. There is a protracted history behind these petitions. However, we prefer not to refer to the same. It is enough for our purposes to mention that the Tribunal is seized of five references made to it be the Central Government. They are Reference Nos. 6, 7, 8, 9 all of 1979 and 19 of 1978. In each of the first four references mentioned above, there is only one employer while in Reference No. 19 of 1978 all the employers in aforesaid four references have been covered. Industrial disputes relating to category of workmen, compendiously called iron ore samplers, have been refereed to the Tribunal in the aforesaid references.

3. Before the Tribunal it was contended on behalf of the petitioners who are the employers, that the industrial disputes referred to the Tribunal were not industrial disputes concerning the major port. Therefore, the Central Government was not the appropriate Government. If the Central Government was not the appropriate Government, naturally, neither the border of reference could be

passed by it nor the Tribunal could proceed with hearing of these references.

4. The Tribunal allowed the parties to lead such evidence that they thought fit and heard the representatives of the parties. The Tribunal gave a finding that the ore sampling workmen were doing work concerning the major port. The Tribunal gave an alternative findings that even if the said workmen were not doing work concerning the major port, they were dock workers within the meaning of the Dock Workers (Regulation of Employment) Act, 1948 and, therefore, their dispute was concerning the major port. On either of these grounds the references were sustainable.

5. The Tribunal considered another argument advanced on behalf of the workmen that even if the disputes were not concerning the major port and were thus disputes mentioned in S. 2(a)(i) of the Industrial Disputes Act, the Central Government itself is the State Government for the Union Territory and, therefore, the references are competent. On this last contention the Tribunal did not record any finding. We will examine this contention in sufficient details later in the judgment.

6. Though the Tribunal gave the aforesaid findings by common order, technically different writ petitions has to be preferred and this has been done. Special Civil Application No. 67 of 1980 challenges the order in so far as it relates to Reference No. 19 of 1978 whereas Special Civil Applications No. 97, 98, 99, and 100 all of 1980 arise out of the order in so far as it relates to References Nos. 9, 6, 7, and 8 respectively all of 1979. The petitions were argued before us for some time and when we were about to deliver the judgment it was noticed that the Central Government had not been made a party in any of these petitions. An argument arose as to whether the Central Government is a necessary party in these petitions. Consequently we heard the learned Advocates at length again on this question and after doing so we reserved the judgment. In view of the not very illuminating reasoning and findings in the order of the Tribunal, we thought it fit to formulate the points which we are called upon to decide after hearing the learned Advocates. The points may be formulated as follows :

(1) Whether the industrial disputes referred to the Tribunal are industrial disputes concerning the major port ?

(2) Whether the Central Government is the State Government for the Union territory of Goa, Daman and Diu ?

If the answer to the first point is in the affirmative, then the second point need not be considered; if the answer to the second point is in the affirmative, then the reference must be allowed to proceed. If, however, the answer to both the points formulated above are in the negative, then it will have to be held that the Tribunal has no jurisdiction to proceed with the references.

7. It has been contended by Mr. Kakodkar, the learned Advocate appearing for the contesting respondent Union, which is respondent No. 3 in these petitions,

that the Tribunal, after appreciating all the evidence on record and after interpreting the relevant provisions of law, has recorded the findings which findings cannot be regarded as perverse or unsupportable by the material on record. According to Mr. Kakodkar, in such a case this Court would not be justified in interfering with the order passed by the Tribunal. There is no dispute about the proposition that this Court in exercise of its jurisdiction either under Art. 226 or 227 of the Constitution of India cannot interfere with a finding of fact recorded by a subordinate or inferior Tribunal. If, however, a tribunal by deciding a jurisdictional fact wrongly assumes jurisdiction, then this Court would be justified in examining the correctness of the finding on the jurisdictional fact. Moreover, in the instant cases the determination of the jurisdictional issues has necessarily involved interpretation of certain statutes. It has thus become inevitable that we look at the reasoning given by the Tribunal. However, we must accept the proposition that the findings given by the Tribunal on the nature of the work performed by the workmen concerned in the references, namely ore sampling workmen are findings of fact binding upon this Court.

8. The Tribunal has not, unfortunately summarised the findings in any particular part of its order. Reading the relevant paragraphs we may say that the ore sampling workmen comprising of various categories of workmen such as Chemists, Samplers, Assistant Samplers and Sample Boys are concerned with taking samples of the ore which is loaded in the port of Marmagoa. The samples which are taken are placed in a bag with proper labels giving the details of the quantity, vessels and party. These samples are taken under the instructions of smaller and assistant samplers. The samples thus taken are sent to the crushing shed which is situated in the harbour. In this crushing shed the samples are processed. Thereafter they are sent to the laboratory which itself is not situated in the port area. The Tribunal has thereafter given the following finding :

"This descriptions however, will show that the whole work is done in one link starting from taking the samples from the cargo about to be loaded ending with giving the certificate when alone the vessels can be said to be ready leave the port."

9. It has been mentioned and in our opinion correctly, that the ships can leave the port without taking the certificate in hand. Carrying of the certificates with them by the ships was thus of secondary importance for the ships. This is the findings of the Tribunal in paragraph 40 of its order though in a later paragraph, probably inadvertently, the Tribunal has mentioned that the certificate is a sine quo non for the ship to leave the port. We may thus take it as a findings of fact that the ore samplings workmen take the samples from the ore loaded on the ships in the harbour and the said samples are passed through several hands till the stage when a certificate of the nature of the cargo is issued. Nowhere in the evidence has it been mentioned that these workmen do any work connected with the port as such; nor is it the finding of the Tribunal.

10. The nature of the work done by the samplers can be best understood if one

makes a reference to the Export (Quality Control and Inspection) Act 1963. It is on account of the requirement of this Act that the sampling workmen have found work which they are now doing. The aforesaid Act was passed to provide for the sound development of the export trade of India through quality control and inspection of matter connected therewith. Prior to the passing of this Act, there was no legislation dealing with the pre-shipment inspection and quality control of the goods exported from India. The Government of India had appointed an ad hoc committee for this purpose. The committee itself recommended that full-fledged legislation should be undertaken covering all aspects of quality control in respect of export commodities. S. 2 is the definitions" Section and Clause (f) of the said Section defines "quality control" to mean "any activity having for its object the determination of the quality of a commodity in order to ascertain whether it satisfies the standard specifications applicable to it or any other specifications stipulated for the export market. S. 6(d) prohibits export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued under S. 7 The certificate that is issued under S. 7 is to the effect that after the examination of the export commodity the agency issuing the certificate is of the opinion that the commodity satisfied the standard specifications laid down for the purpose. S. 8 of the Act empowers the Central Government to recognise or establish any mark or seal in relation to a notified commodity for the purpose of denoting that such commodity conforms to a standard specification applicable to it. This is analogous to the ISI mark on the commodities which are handled by the ISI. A complete reading of this Act does not show that the persons who are engaged in inspection or in taking samples of an export commodity have anything to do with the port or with the port work. If the ore sampling workmen are thus not concerned with the port, one does not see how an industrial dispute in which they are involved can be said to be concerned with the major port. Merely because a certificate is issued after the sampling work is done by the sampling workmen and after the samples are analysed, one cannot say that the work done by the sampling workmen or by the analyst has anything to do with the port, though indirectly it is connected with the export of the commodities. The word "concerning" means having relation to or having reference to. Broadly it may be even involved with something else. Even then it can be said that it is concerning with the other thing or concerned with the other thing. The fact that the ships are anchored at the port and the cargo, inspected and sampled, is loaded on the ships do not make the work of the workmen in this case to be connected with or to have relation with the port itself.

11. Mr. Kakodkar relied upon the instructions to inspection agencies issued by the Export Inspection Council appointed by the Government under the above mentioned Act. These instructions have been annexed to the memo of petition in Special Civil application No. 97/5 of 1980 as annexure "L". These instructions are somewhat detailed and direct the inspecting agencies to follow a particular procedure to see that the inspection and sampling conform to certain

requirements. After going through these instructions, we are, again unable to find any nexus between the work done by the sampling workmen and the major port. Indeed, there is no connection even with the physical export of the merchandise. The inspection and sampling work is for the purpose of ensuring that goods of proper quality are exported. It has nothing to do with the manner of the export or the use of the major ports by the exporting agencies. The nature of the work done by these sampling workmen, which has been noticed by the Tribunal in paragraph 45 onwards of its order, does not, in our opinion, concern with the major port. An industrial dispute relating to the said workmen, therefore, cannot be said to be concerning the major port.

12. Predictably, reliance has been placed by Mr. Kakodkar on a judgment of this Court in *Tulsidas Khimji Vs. Jeejeebhoy (F.)*. After reading them said judgment, we are of the opinion that it does not render any assistance in deciding the question before us. The facts of *Tulsidas Khimji's* case (*supra*) showed that there was a godown which was utilised by the petitioner in that case for storing the goods meant for clearing and shipping. On the basis of that admitted fact this Court held that the business of the petitioner firm concerned major port. In fact the contention that the business of the petitioner firm did not concern the major port was not allowed to be raised because it had not been raised before the authority below and secondly the conduct of the petitioner itself showed that the petitioner had recognised their work as one concerning the major port. On the other hand, the judgment of the Supreme Court in *Serajuddin and Co. Vs. Their Workmen*, , is definitely of great assistance to an in appreciating the factors involved while deciding the question whether the dispute is one concerning the major port. In *Serajuddin's* case (*supra*) the question was whether an industrial dispute involving the employees employed at the Calcutta office of a mining company was concerning the mine. The Supreme Court considered the meaning of mine in the light of the dictionary as well as in the light of the definition of the said word in S. 2(j) of the Mines Act, 1952. It was held by the Supreme Court that the work of the workmen must be connected with the working of the mine. From this it can be inferred that unless the work of the ore sampling workmen has something to do with the working of the port, the dispute involving them cannot be said to be a dispute concerning the port.

13. We may now briefly refer to some of the judgments cited at the bar, though they may not be on all fours with the question we are dealing with. We have held, after examining the nature of the work done by the ore samplers in the light of the evidence given and in the light of the statute on account of which they are engaged in the sampling work, that the dispute raised by them is not concerning the major port. In *Radha Shyam Bagaria v. Union of India* 1980 I L.L.J. 249, it was held that the nature and activity of the management and the extent of its relationship with the port work should be considered while determining the question under S. 2(a)(i) of the Industrial Disputes Act. In this judgment a reference was made to the Supreme Court judgment in *Serajuddin's* case (*supra*). Reference was also made to the judgment of this Court in *Tulsidas*

Khimji's case (supra). It was not pointed out that because of the concession made and because of the fact that the contention in that regard had not been raised in the Court of first instance, Tulsidas Khimji's case (supra) did not really consider what activities would constitute work concerning a major port.

14. The decisions in Serajuddin's case (supra) and Radha Shyam Bagaria's case (supra) show what is not concerning the major port. An authority which deals with the question of what is concerning the major port may now be examined. That is *Continental Construction v. Government of India* 1977 Lab. I.C. 1199. This is a judgment of the Andhra Pradesh High Court and it mentions that the word "concerning" appearing in S. 2(a)(i) of the Industrial Disputes Act must be construed in a reasonable manner, and referring to such industrial disputes only which have got a proximate, intimate and real connection with the corporations or authorities mentioned in the said definition. Applying this test it was held that an industrial disputes between a contractor engaged by the Visakhapatnam Port Trust for the construction of break-waters and jetty's in connection with the outer harbour at the Visakhapatnam Port and his workmen was likely to affect the progress of the work and would directly affect the port.

15. In *Ambika Prasad v. State of Orissa* 1974 I LLJ 65, (of Orissa High Court), on which Mr. Kakodkar placed reliance, it was held that the workmen employed by the loading contractors in a railway plot, which itself was in the mining area, were doing an operation which was within the purview of the definition of mine. On this ground it was held that for the dispute concerning them the appropriate Government was the Central Government. We do not see how this decision throws any light on the question before us. The nature of the operations involved in the mining work was considered and it was held that the loading operation in railway wagons in a mining area was connected with the mining work.

16. Our conclusion is that the iron ore samplers in the present case are not involved in any work connected with or related to a major port. If their work is stopped or if they go on strike then the work of a port or a major port will not in any way be affected. In a given case particular cargo may be off-loaded because it is not accompanied by a certificate. This also may not happen because the material on record shows that a cargo is not necessarily off-loaded if it is not accompanied by a certificate. It is in fact allowed to leave the port, even without a certificate under the Export (Quality Control and Inspection) Act, 1963 having been given. The Tribunal has in fact accepted this position, though at a later stage the Tribunal had made a remark that issuance of the certificate is the sine quo non for the ship leaving the port. An industrial disputes raised by such workmen, therefore, cannot be a dispute concerning a major port.

17. Mr. Usgaonkar has invited our attention to the provisions of the Major Port Trusts Act, 1963. This is an Act passed by the Parliament for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith. Section 35 refers to the works that may be executed by the

Board within or without the limits of the port. The Board's also empowered to provide such appliances as it may deem necessary or expedient. The works and appliances with which the Board is concerned under S. 35 have been enumerated in Sub-S. (2) of the said section. Section 35A of the Act deals with the power of the Board to provide for sufficient number of landing places and incidental matters. Section 36 refers to the power of the Board to undertake certain works or services or any class of works or services. Section 37 empowers the Board to order sea-going vessels to use docks, wharves etc. The Board is invested with the power, under S. 42(1) of the Act, to undertake various services. Sub-S. (3) of S. 42 enables the Board, with the previous sanction of the Central Government, to authorize any person to perform any or the services mentioned in sub-S. (1) of the said section.

18. The various functions of the Board under the Major Ports Trusts Act have been briefly referred to by us in the preceding paragraph. This was only for the purpose of finding out whether the agencies employing the ore sampling workmen or the ore sampling workmen themselves are connected with any of the works or services undertaken by the Board under the said Act and whether the workmen or their employers have been entrusted with any work by the Board which is in charge of a major port. We have not been able to find any connection between the work carried on by the ore sampling workmen or by their employers and the works and services undertaken by the Board.

19. The Tribunal has given an alternative finding that considering the nature of the work of the iron ore samplers they must be held to be dock workers within the meaning of S. 2(b) of the Dock Workers (Regulation of Employment) Act, 1948. Without going into the question whether any dispute concerning the dock workers is necessarily a dispute concerning the major port, we proceed to see whether the iron ore samplers are covered by S. 2(b) of the aforesaid Act. A dock worker has been defined to mean "a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port." Analysing the aforesaid definition, it can easily be seen that it is not enough for a person to be a dock worker to be merely employed in any port or in the vicinity of any port. He must be so employed on work and that work must be in connection with the loading, unloading, movement or storage of cargoes. Some of the iron ore samplers who are before us may be employed in or in the vicinity of a port, but they are clearly not employed in connection with the loading, unloading, movement or storage of cargoes. The work carried on by them has nothing to do with any of these activities. They merely take samples for the purpose of analysis from the ore which is already loaded in the ship. It may be, sometimes they may be taking the samples from the cargo which is not loaded. The fact of their taking such samples has nothing to do with the loading or unloading operation, nor has it got any connection with the movement or storage of cargoes. The iron ore samplers play no role at all in any of these activities.

20. Mr. Kakodkar, however, insists that by taking the samples from the cargo the iron ore samplers do the work in connection with the preparation of the ships to leave the port. This submission is based on the assumption that unless the samples are taken from the cargo the ship is not able to leave the port. That, unfortunately, is not the finding of the Tribunal nor has it been shown to us that this is factually the correct position. Even assuming that this is so, one cannot say that the said work is connected with the preparation of the ships or the vessels for receipt of the cargo or for leaving the port. The preparation of the ships envisaged in the second part of this definition in S. 2(b) of the Dock Workers (Regulation of Employment) Act 1948 deals with the physical preparation of the ships. It is inconceivable that iron ore samplers have anything to do with the preparation of the ships in this sense.

21. Considering the facts and circumstances of the present case we are of the opinion that an industrial dispute in which iron ore samplers are involved is not an industrial dispute concerning the major port within the meaning of S. 2(a)(i) of the Industrial Disputes Act. If this is so, the Central Government is not the appropriate Government for referring the said dispute to the Tribunal. The first point formulated by us above is thus answered in the negative.

22. The next question is whether the Central Government itself can be said to be the State Government for the Union Territory of Goa, Daman and Diu. On this aspect of the question several authorities have been cited before us to throw light on the position of the Administrator who is appointed by the President under Art. 239 of the Constitution of India. Article 239 of the Constitution says that save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. There is an Act of the Parliament called the Government of Union Territories Act, 1963 which, as at present, applies only to the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, Pondicherry, Mizoram and Arunachal Pradesh. Reference has been made to this Act during the course of the arguments. Reference has also been made to the Goa, Daman and Diu (Laws) Regulation, 1962 under which (see S. 3) several Acts mentioned in the schedule to the said Act are extended to the Union Territory of Goa, Daman and Diu. Among these Acts is the Industrial Disputes Act, 1947. We do not think it necessary to consider the various authorities cited at the bar because, in our opinion, they are not relevant to the determination of the question whether the Central Government is the State Government under S. 2(a)(ii) of the Industrial Disputes Act. Since the Industrial Disputes Act is a Central Act, we must find out from the provisions of the General Clauses Act, 1897 as to which Government is the State Government for the Union Territory of Goa, Daman and Diu or for that matter for any Union Territory.

23. Under S. 3(60) of the General Clauses Act, 1897, "State Government" means, among other things, "as respects anything done or to be done after the

commencement of the Constitution (Seventh Amendment) Act, 1956, in a state, the Governor, and in a Union Territory, the Central Government". The Central Government thus will be the State Government for a Union Territory. We must now turn to the definition of "Central Government" which is to be found in S. 3(8) of the said Act. The said definition is as follows :

"Central Government" shall -

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General-Council, as the case may be; and shall include -

(i) in relation to functions entrusted under sub-S. (1) of S. 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-S. (3) of S. 94 of the said Act; and

(b) in relation to anything done or to be done after the commencement of the Constitution mean the President; and shall include -

(i) in relation to functions entrusted under cl. (1) of Art. 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C State before the commencement of the constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of neighbouring State or other authority acting within the scope of the authority given to him or it under Art. 239 or Art. 243 of the constitution as the case may be; and

(iii) in relation to the administration of a Union Territory the administrator thereof acting within the scope of the authority given to him under Art. 239 of the Constitution."

If one reads the said definition carefully it is noticed that in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Art. 239 of the Constitution is the Central Government. One must, therefore, accept the position that this administrator is the State Government in so far as the Union Territory is concerned. That is so provided in the definition of the State Government in S. 3(60) of the General Clauses Act.

24. Mr. Kakodkar, however, says that the words "and shall include" in the above mentioned definition does not exclude the President himself and, therefore, the President acting through the Central Government. If this is so, the Central Government is also the State Government in the Union Territory of Goa, Daman

and Diu. He suggests that the words "and shall include", necessarily denote that apart from the authorities mentioned in the earlier part, some other authorities are also included in the definition. This means that the authorities included the Central Government also. Mr. Kakodkar is right in so far as he suggests that the words "and shall include" normally suggests the enlargement of the definition contained in the earlier part, but this definition, as other definitions in the statutes, is to be understood in the context. Section 3 of the General Clauses Act itself says "In this Act, and in all General Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context. ..." We have to find out, therefore, if the Central Government is also the State Government, in addition to the administrator, for the Union Territory. If it is so held it will result in an anomalous situation. Can there be two State Government for a Union Territory ? If the functions of the State Government are to be exercised by whom will they be exercised ? Answers to these questions show that the Central Government cannot be the State Government for the Union Territory.

25. Mr. Usgaonkar has invited our attention to a judgment of the Supreme Court in *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, wherein it has been pointed out that the word "include" though often used as a work of enlargement in some cases may suggest a different meaning. The Supreme Court has relied upon the following observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) A.C. 99 :

"But the word "include" is susceptible of another construction, which may become imperative if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions denied. It may be equivalent to "mean and include", and in that case it may effort an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to these words or expressions".

26. It may also be stated that if we accept that the Central Government apart from the administrator is also the State Government for the Union Territory, it will be repugnant in the subject as well as the context. Under the Industrial Disputes Act, several fractions are to be performed by the appropriate Government. Two Governments cannot be the appropriate Governments operations in the same field in respect of the dame subject matter. If the central Government is also the State Government for the Union Territory and is thus to act as the appropriate Government under S. 2(a)(ii) of the Industrial Disputes Act the question will arises as to which Industrial Tribunal will it refer an industrial dispute. Apart from this if the administrator who is the State Government for the Union Territory, deal with a dispute there will be two authorities operation go in the same field at the same level which is not envisaged under the Industrial Disputes Act. On the other hand there are indications available in the Industrial Disputes Act itself to show that if one

Government is acting, another Government cannot act in the same field in respect of the same subject matter. There are several authorities functioning under the Industrial Disputes Act. They are subject to either the Central government or the State Government depending upon which is the appropriate Government in respect of the matters handled by them. It will create utter confusion and chaos if it is held that two Governments cannot be the appropriate Governments for a State or for a Union Territory. It is our considered opinion, therefore, that the Central Government cannot be the State Government for the Union Territory of Goa, Daman and Diu and, therefore, it cannot be the appropriate Government for the Said Union Territory under S. 2(a)(iii) of the Industrial Disputes Act.

27. It has, however, been argued by Mr. Kakodkar that we cannot properly decide that Central Government, which has made the references in these cases, is not the appropriate Government without hearing the Central Government itself in that regard. The argument is that we cannot give a finding that the Central Government is not the appropriate Government under S. 2(a)(ii) of the Industrial Disputes Act without the said Central Government being made a party to these petitions. Admittedly the Central Government has not been made a party. The submission of Mr. Kakodkar is based upon a judgment of this Court in *U.K. Roller Flour Mill v. Industrial Court, Nagpur* (149) Lab I.C. 45. It was contended before the Division Bench of this Court which decided that case that the reference was not maintainable inasmuch as there was not even a suggestion of a dispute, let alone the existence of any dispute between the parties which could not be settled by any other means. It may be mentioned at this stage that the reference in the case of *U.K. Roller Flour Mill's case* (supra) was under the provisions of the Bombay Industrial Relations Act. It was argued before the Division Bench that the power which was conferred under S. 73 of the Bombay Industrial Relations Act upon the Government could not be exercised arbitrarily and that it was pre-conditioned by the existence of circumstances which were mentioned in S. 73. If those conditions did not exist, then the Tribunal could not enter upon the reference. While considering the aforesaid arguments, this Court pointed out that neither the Tribunal nor the Court enter itself upon the consideration as to whether the pre-conditions empowering the State Government to make a reference existed or not when the State Government was not a party to the proceedings. Even in the writ petition where the authority or power of the Government was challenged, as having been exercised in an improper manner and not upon the basis of the conditions which were necessary to pre-exist before a reference under S. 73 could be made, the decision could not be given without making the State Government a party.

28. On a first reading of the judgment, it seems to support the contention of Mr. Kakodkar. But a careful examination of the same would show that what the Division Bench said was that if the reference itself is to be challenged as having been improperly made or without the essential conditions for making the reference being present such as the formation of the opinion or the existence or

apprehension of an industrial dispute, then the State Government is a necessary party. In the petitions before us, it has not been contended that the subjective satisfaction of the appropriate Government before making the reference was absent. What is being challenged before us is the finding given by the Tribunal that the dispute is concerning the major port. This question was decided on evidence led before the Tribunal. A finding has been given and this finding is naturally amenable to the writ jurisdiction. If a fact has been wrongly decided then this court can issue a writ of certiorari or a writ of prohibition restraining the Tribunal from proceedings with the hearing of the references, though the references might have been made after the subjective satisfaction of the appropriate Government. As has been pointed out in *De Smith's Judicial Review of Administrative Action*, fourth Edition, "A tribunal does not go beyond its jurisdiction merely by making a decision that is erroneous in law or fact. But if the tribunal's error relates to a collateral or preliminary matter upon which its jurisdiction depends, or if it falls into error through asking itself and answering the wrong question or through applying a wrong legal test or taking irrelevant considerations into account or disregarding relevant considerations, then certiorari may issue to quash its decision or prohibition may issue to prevent it from proceeding further. The concept of jurisdictional error is now so malleable that virtually any error of law would appear capable of being characterized as jurisdictional and little room has been left within which error of law on the face of the record may operate as an independent ground of review". When we are examining not the competence of the appropriate Government directly or of the subjective satisfaction of the Government before it exercised the powers conferred upon it under S. 10 of the Industrial Disputes Act but the correctness of a finding given by the Tribunal on the question of jurisdictional facts, it is not, in our position, necessary to make the concerned Government a party to a petition under Art. 226 or Art. 227 of the Constitution.

29. Reliance was also placed by Mr. Kakodkar on the judgment of the Supreme Court in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, in support of his contention that the Central Government is a necessary party in these petitions. We do not think that the judgment in *Udit Narain Singh*'s case is of any assistance to Mr. Kakodkar. That judgment lays down that any party who is likely to be affected by any decision should necessarily be joined as a party in the petition. It cannot be said that the Central Government is likely to be affected by any decision given these writ petitions.

30. We may now proceed to summarise the findings given by us. First, an industrial dispute involving iron ore samplers is not an industrial dispute concerning the major port; secondly iron ore samplers are not dock workers as defined in S. 2(b) of the Dock Workers (Regulation of employment) Act 1948; thirdly, the Central Government is not the State Government for the Union Territory of Goa, Daman and Diu under S. 2(a)(ii) of the Industrial Disputes Act 1947; on the other hand, it is the administrator appointed under Art. 239 of the Constitution of India who is the State Government for the Union Territory of Goa,

Daman and Diu and he is the appropriate Government within the meaning of S. 2(a) of the Industrial Disputes Act; and fourthly, in a petition under Art. 226 or 227 of the Constitution challenging the finding of the Industrial Tribunal on jurisdictional facts in a reference under S. 10 of the Industrial Disputes Act, it is not necessary to join the Government which made the reference as a necessary party to the petition.

31. In the view which we have thus taken, these petitions must succeed. Accordingly, rule is made absolute in terms of prayer cl. (a) in each of these petitions.

32. There will be no order as to costs in these petitions.