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**(1996) 05 OHC CK 0009**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1511 of 1996**

Gouri Sankar Dhar

APPELLANT

Vs

Government of Orissa and Others

RESPONDENT

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**Date of Decision :** 03-05-1996

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

**Citation :** (1999) 3 LLJ 1212

**Hon'ble Judges :** A. Pasayat, J;A. Deb, J

**Bench :** Division Bench

**Advocate :** G.H. Panda, Sanju Panda and D. Mohapatra, for the Appellant;  
Additional Government Advocate for Respondent No. 1 and A.C. Mohanty, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Pasayat, J.—Petitioner calls in question legality of order passed by the Government of Orissa in the Labour and Employment Department, refusing to refer a purported dispute for adjudication by the appropriate adjudicating forum by impugned order dated December 8, 1995 (Annexure-6).

2. The facts giving rise to the application essentially are as follows:

Questioning correctness of the order of retrenchment as passed by the Bargarh Regional Co-operative Marketing Society Limited (in short, "the Society"), petitioner moved the District Labour Officer-cum-Conciliation Officer, Bargarh. He took the stand that his retrenchment was not in accordance with law. A failure report was submitted by the Conciliation Officer. On consideration of the report, the State Government by the impugned order refused to make a reference.

While exercising power u/s 12(5) of the Industrial Disputes Act, 1947 (in short "the Act") refusal was made on the following ground as contained in the impugned order.

"On consideration of the abovementioned report and in exercise of the power conferred u/s 12(5) of the I.D. Act, 1947, the State Government are satisfied that there exists no case for reference for adjudication since the management has followed all statutory provisions."

3. According to Ms. Sanju Panda, learned Counsel appearing for the petitioner, the Courts adopted by the State Government in refusing the reference is clearly contrary to law. The learned Counsel for State on the other hand submitted that the State Government is not required to act as a mere post office and to automatically or in a routine manner refer every question which is characterised as an industrial dispute.

4. While exercising power u/s 10(1) of the Act, the function performed by the appropriate Government is an administrative function, and not a judicial or quasi judicial function. (See Shambu Nath Goyal Vs. Bank of Baroda, and Ram Avtar Sharma and Others Vs. State of Haryana and Another, . If the Government performs an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of the lis. That would certainly be in excess of the power conferred by Section 10. The said provision requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of the power it is liable to be questioned in exercise of the power of judicial review. The Court may not issue writ of mandamus, directing the Government to make a reference, but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to consider the matter. In State of Madras Vs. C.P. Sarathy and Another, , and in Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, , it was held that the function of the appropriate Government thereunder is an administrative function. It was so held, presumably, because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. The Court would be justified in issuing a writ of mandamus directing the government to reconsider the question of making or refusing to make reference of a dispute on the following grounds, namely, (a) failure to record and communicate reasons, (b) ignoring Conciliation Officer's report, (c) nature or reasons i.e., irrelevant or extraneous reasons or reasons tantamounting to adjudication.

5. When the appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication accordingly as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in support of which a failure report has been submitted u/s 12(4) the appropriate Government ultimately exercises its power u/s 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made u/s 12(4). This question has been considered by the Supreme Court in the case of the State of Bombay Vs. K.P. Krishnan and Others, . The decision in that case clearly shows that when the appropriate Government considered the question as to whether any industrial dispute should be referred for adjudication or not, it may consider prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether, its power to make a reference should be exercised u/s 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference.

6. It is necessary to remember that in entertaining an application for a writ of mandamus against an order made by the appropriate Government u/s 10(1) read with Section 12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reasons to a party for refusing to make a reference u/s 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference. It is no doubt desirable that the party concerned should be told clearly and precisely the reasons why no reference is made, because the object of Section 12(5) appears to be to require appropriate Government to state its reasons for refusing to make a reference, so that the reasons should stand public scrutiny; but that does not mean that a party challenging the validity of the Government's decision not to make a reference can require the Courts in writ proceedings to examine the propriety or correctness of the said reasons. If it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt, may justify the claim for a writ of

mandamus.

7. As would be apparent from the extracted portion of the impugned order, there was a determination of the lis by the State Government, while refusing to make a reference. That is not permissible. In the circumstances, we set aside the impugned order dated December 9, 1995 (Annexure-6) and direct reconsideration by the State Government. We make it clear that we have not expressed any opinion on merits which is to be adjudicated by the State Government.

The writ application is allowed to the extent indicated above. No costs.

A. Deb, J.

8. I agree.