

(1965) 03 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 94 of 1964

Harihar Bahinipaty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-03-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 15(5), 2

Citation : AIR 1966 Ori 35 : (1965) 31 CLT 446 : (1965) 10 FLR 313

Hon'ble Judges : S. Barman, J;G.K. Misra, J

Bench : Division Bench

Advocate : L. Srinivas Misra and S.K. Kundu, for the Appellant; A.G. and R.N. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—The main point in this writ petition is whether the petitioners working under Shri Jagannath Temple Managing Committee as Daffadars, Barkandajes, Ballav Gudias (who prepare Ballav and Kora which are offered to the deities) form an "industry" within the meaning of Industrial Disputes Act, 1947.

2. The dispute between the management of Shri Jagannath Temple, Puri, and the petitioners who claim to be workmen represented by Jagannath Temple Employees Union is over the arrears of salary which the management refused to pay the petitioners. The petitioners' Union raised the matter before the Assistant Labour Commissioner for conciliation which ultimately failed. Thereafter in due course the petitioners moved the State Government for referring the dispute for adjudication. The State Government by their Order dated April 14, 1964 decided that there is no case for reference of the dispute for adjudication since, according to the Government, the dispute between the management of Puri Jagannath Temple and its workmen does not come within the purview of the Industrial Disputes Act, 1947. It is this order which the petitioners challenge in this writ petition and pray for a decision on the State of Orissa to refer the dispute for

adjudication u/s 10 of the Act.

3. It is not disputed that Jagannath Temple is a spiritual institution. Lord Jagannath is the presiding deity in the temple. The pilgrims visit the place for their spiritual benefit. The offerings that the pilgrims make to the deity are primarily by way of oblation to the deity although ultimately the offerings, namely the Bhog, are sold to the public. Undoubtedly the predominant function of the "temple is for spiritual benefit of Hindu Public who hail from all over the country. Considered from this aspect, which I shall deal with more fully hereafter, it cannot be said that Jagannath Temple is an industry.

4. The petitioners' point is that they as Daffadars, Barkandas, and Ballav Gudias appointed by Shri Jagannath Temple Managing Committee form a separate independent unit for maintaining order and discipline in the temple and also otherwise serving other material human needs as opposed to the spiritual needs and accordingly they by themselves form an "industry" within the meaning of the Act. It is said that most of the petitioners serve the temple in the capacity of Barkandas and many are employed in the work of preparing Ballav, in collecting rent, in electric work, in the office as moharirs and peons, in cleansing the temple and the office which is outside the temple premises. Barkandaj-petitioners maintain peace and order in the temple and also guard the temple and temple office. The Daffadars-petitioners work as supervisors over Barkandajes.

5. The main grounds on which the petitioners rely in support of their claim as forming an industry are, as stated in paragraphs 3, 6, and 8 of the petition, these:

"3. That Shri Jagannath Temple, one of the prominent places of Hindu Pilgrims was being administered by the Rajas of Puri. The Sevaks of the temple who were a part and parcel of the temple were being treated separately from the servants who were merely administering to the material needs of the temple administration and the visiting pilgrims. This distinction was manifest in the hereditary rights given to the sevakas whereas the servants who were being paid salary or wages were being appointed by the temple administration. This distinction was recognised by the Jagannath Temple of Puri (Administration) Act, 1952 (Act XIV of 1952) which embodies the rights of the Sevakas in a record of rights prepared for the purpose."

"6. That the maintenance of peace and order in the temple and preparation of sweets are undertakings not connected essentially with the spiritual side of the temple. They are such undertakings as any ordinary man might undertake for profit".

"8. That after the passing of the Shri Jagannath Temple Act, opposite party No. 2 has taken over management of the temple since October, 1960 and it is the duty of opposite party No. 2 to ensure maintenance of order and discipline and proper hygienic condition in the temple and of proper standard of cleanliness and purity

in the offerings made therein, which are purely temporal functions carried out by opposite party No. 2 through most of the petitioners."

6. The words "industry", "industrial dispute" and "workmen" have each its special connotation as defined under the Act thus:

"2(j). "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment or avocation of workmen."

"2(k) "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person".

"2(s). "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such personbut does not include any such person-

(ii) who is employed in the Police Service or as an officer or other employees of a prison" (portions not relevant have not been quoted)

7. In view of the wide definition of "industry" in Section 2(j) of the Act the Supreme Court in several decisions has laid down where the line should be drawn and what limitations can and should be reasonably employed in interpreting the wide words used in Section 2(j). The basic tests were clearly laid down in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and have been consistently reiterated in subsequent decisions of the Supreme Court and followed by the High Courts. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , their Lordships laid down:

"As a working principle, it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus, the manner in which the activity in question is arranged or organised, the condition of the co-operation between the employer and the employees necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies."

8. Therefore, the two essential requirements to constitute an industry are, firstly, that there should be an organised operation, as in trade or business, in which

capital and labour co-operate, and secondly, that such co-operation should be for the satisfaction of material human wants or desires. An activity systematically or habitually undertaken for the production or distribution of goods or the rendering of material services to the community at large or a part of such community with the help of employees will be an undertaking within the meaning of Section 2(j).

9. It was also laid down by the Supreme Court that if a department was carrying on predominantly industrial activities, the fact that some of its activities may not be industrial did not matter. The test of predominant activity was applied to the University of Delhi. It was found that the predominant activity of the University was outside the purview of the Act, because teaching and teachers connected with it do not come within its purview, and so, the minor and incidental activity carried on by the subordinate staff which may fall within the purview of the Act, cannot alter the predominant character of the institution. In *University of Delhi and Another Vs. Ram Nath*, the services of two drivers of the University buses were terminated. The University found that running of the buses for convenience of girl students attending the college resulted in loss and so decided to discontinue that amenity. The drivers raised dispute. They took the plea that it was an industrial dispute and filed petitions u/s 33C(2) of the Industrial Disputes Act. Their petitions were resisted by the University on the preliminary ground that the work carried on by the University was not an industry and so the two drivers' applications were incompetent. The matter went up to the Supreme Court who held that the University was not an Industry.

10. The reasoning which primarily weighed with their Lordships in the Delhi University case AIR 1963 SC 1873 was this; Like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff does the work assigned to it; but in the main scheme of imparting education, this subordinate staff (namely, the 2 bus drivers in that case) plays such a minor, subordinate and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. The work of promoting education is carried on by the University and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall u/s 2(j). Education in its true aspect is more of a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why their Lordships thought it would be unreasonable to hold that educational institutions are employers within the meaning of Section 2(g), or that the work of teaching carried on by them is an industry u/s 2(j), because, essentially the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process,

11. It was also in the light of those principles that in *The National Union of Commercial Employees and Another Vs. M.R. Meher*, Industrial Tribunal, Bombay and Others, (para 11) the Supreme Court decided that a solicitors' firm is not an Industry. It was found that the solicitors' firm does not satisfy the test. Superficially considered, the solicitors' firm is no doubt organised as an industrial concern would be organised. There are different categories of servants employed by a firm, each category being assigned separate duties and functions. The considerations which weighed with their Lordships in finding that the solicitors' firm is not an industry are these: The service rendered by a solicitor functioning either individually or working together with partners is service which is essentially individual; it depends upon the professional equipment, knowledge and efficiency of the solicitor concerned,

Subsidiary work which is purely of an incidental type and which is intended to assist the solicitor in doing his job has no direct relation to the professional service ultimately rendered by the solicitor. For his own convenience, a solicitor may employ a clerk because a clerk would type his opinion; for his convenience, a solicitor may employ a menial servant to keep his chamber clean and in order; and it is likely that the number of clerks may be large if the concern is prosperous and so would be the number of menial servants. But the work done either by the typist or the stenographer or by his menial servant or other employees in a solicitors firm is not directly concerned with the service which the solicitor renders to his client and cannot, therefore, be said to satisfy the test of co-operation between the employer and the employees which is relevant to the purpose.

There can be no doubt that for carrying on the work of a solicitor efficiently, accounts have to be kept and correspondence carried on and this work would need the employment of clerks and accountants. But the work of the clerk who types correspondence or that of the accountant who keeps accounts has no direct or essential nexus or connection with the advice which is the duty of the solicitor to give to his client. There is, no doubt, a kind of co-operation between the solicitor and his employees, but that co-operation has no direct or immediate relation to the professional service which the solicitor renders to his client. It was on this reasoning that their Lordships did not accept the plea that a solicitors' firm carrying on the work of an attorney is an industry within the meaning of Section 2(j).

12. The question now is: Can these Daffadars, Barkandas and Ballav Gudias serving in Shri Jagannath Temple, petitioners herein be said to form an industry within the meaning of Section 2(j) of the Act ? Our considered view is: No. The reasons are as hereinafter discussed.

13. The Hindu concept of idol worship in a temple is primarily spiritual. The gods that are popularly worshipped by the Hindus at the present day are for the most part Pauranic deities, descriptions of which occur in the various Purans. The different images do not represent separate divinities: they are really symbols of

the one Supreme being, and in whichever name and form the deity might be invoked, he is to the devotees the Supreme God to whom all the functions of creation, preservation and destruction are attributed. In worshipping the image therefore the Hindu purports to worship the Supreme Deity and none else. Goutama mentions a temple of God in more than one place in his Dharma Sutra. It is stated to be one of the objects which destroys sin. While enumerating the various things which cannot be partitioned Goutama says "water for pious uses and sacrifices and prepared food shall not be divided". These indicate the spiritual implication of the offerings that are made out of devotion to the deity by the pilgrims visiting the temple.

14. From very early times the temples of the religious institutions in this country were under the special protection of the ruling authority. The former rulers of this country always asserted the right to visit these institutions to prevent and redress the abuses in their management. The superintending authority was thus exercised by the old rulers. The Puri Sri Jagannath Temple was from the ancient times under the immediate control and management of the Rajas of Khurda. It is said that even the slightest deviation from the prescribed duties was severely punished either by fine or corporal chastisement. Since the British conquest of Orissa in 1803 the administration and affairs of the temple have been throughout maintained in keeping with the traditions and religious sentiments of the Hindu public. There were Sevaks, Pratiharis and other employees all connected with the affairs of the temple. The nature of these employees of the Temple continues to remain substantially the same although some of the classes of the Sevaks have by the present day undergone a change from what they were at the time of the British Conquest.

15. The duties of these employees of the temple found statutory recognition in the successive Acts which were passed for the administration of the temple.

16. In 1952 the Puri Shri Jagannath Temple (Administration) Act (Orissa Act 14 of 1952) was passed to provide for the administration of the Temple preventing mismanagement of the Temple and its endowments by consolidation of the rights and duties of Sevaks, Pujaris and such other persons connected with the Seva, Puja and management thereof. Section 9 of the said Act provided for appointment of a Special Officer for the preparation of a record consolidating the rights and duties of different Sevaks and Pujaris and such other persons connected with the Seva, Puja or management of the Temple and its endowments.

17. Accordingly the Special Officer appointed under the Puri Shri Jagannath Temple Act (Act 14 of 1952) filed his report in 1954 (Published in the Orissa Gazette under Notification d/- September 6, 1954) containing therein succinctly a brief outline of all parts of the record-of-rights. Chapter V of the Report states the various classes of Sevaks and other persons connected with the Seba-puja or management of the temple of Lord Jagannath. In the said Chapter among the Sevaks are included Khuntias of various kinds, their main duty being to give

Manima Dak etc. and watch the deities; Padhiaries who guard the Deities, go to call for bhogs and are to look to the safety of the pilgrims, Jogania for Koth Bhog, Parbajatra, Ballav and Bahar Deuli to carry articles and Ballav and supply at required places. Temple Police who guard the temple; and Suars of various kinds known by different names according to the nature of duties who cook and prepare Bhog like, among others mentioned in the report, Tola Bati i.e. who shows light. The petitioners who are daffadars, Barkandajes and Ballav Gudias by nature of their duties also come within the category of Sevaks as mentioned in the report of the Special Officer.

18. This view is further confirmed by the Record-of-rights and duties of various classes of Sevaks and others employed for or connected with Seva-Puja of the Temple prepared under the Puri Shri Jaggannath Temple (Administration) Act (Orissa Act 14 of 1952) read with the rules made thereunder as published in the Orissa Gazette on June 27, 1956, "Ballav Jogania" appears under the column "Class of Sevaks" and under "Incidents of service" their duties are thus mentioned (translated) :

Rules of Service.

Every day, after the Homa is accomplished in the kitchen, these people will go to the Ballav house according to rotation and bringing Gopal-Ballava already measured in a basket, will deliver to the custody of Sudu Suara at Dhukudi Dwar (gate). "Kora" must have been prepared and kept by them in the Ballava house since the previous night and the Kora shall be supplied with parched paddy. After keeping the Ballava, they will take the basket and will bring Ballava, Kora etc. from the Ballava House and will supply the same in the places of Parswa deities, inside and outside the Temple as has been fixed.

They will supply "Ballava" at the Jai Bijai Dwar (gate) during Ansara (i.e. during the dark fortnight of the month of Asadha when pilgrims cannot see the three Idols at Puri).

Accompanied by Pradhani, they will take Ballava from the temple (Sri Mandir) to the Gundicha house. They will also supply "Ballava" at the Chariot."

It is clear that the nature of the work is connected with the spiritual side of the temple, namely Seva-Puja of the deity.

19. This record of rights and duties of various classes of Sevaks and other employees in the temple find statutory recognition in Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955) which was enacted to provide for better administration and governance of Sri Jagannath Temple at Puri and its endowments as will appear from the preamble itself of the Act. Since the passing of the Act, Shri Jagannath Temple Managing Committee which was constituted by the State Government under the said Act took over management of the temple. The services of the petitioners (except Nos. 1 and 6) who were already in service of the Temple on the date of the commencement of the Act were retained as

existing employees by virtue of Rule 12 of Shri Jagannath Temple Rules, 1960 made under the said Act.

20. The position that the duties of the petitioners are directly connected with spiritual side of the temple is also established by the various provisions of the Sri Jagannath Temple Act 11 of 1955. Section 4(2) declares that any reference to the word "Temple" in the enactments mentioned in the Act may be construed as a reference also to the deity, if any, installed in such Temple. Section 5 provides to the effect that the administration and governance of the Temple and its endowments shall vest in a Committee called Shri Jagannath Temple Managing Committee and that it shall be a body corporate. Section 6(1) provides that the constitution of the committee will include, among others, three persons to be nominated by the State Government from among the sevaks of the temple recorded as such in the Record-of-rights Members. Section 15 laying down the duties of the Committee is this:

"Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Committee-

(1) to arrange for the proper performance of Seva-Puja and of the daily and periodical Nitis of the Temple in accordance with the Record-of-rights :

(2) to provide facilities for the proper performance of worship by the pilgrims:

(3) to ensure the safe custody of the funds, valuable securities and jewelleries and for the preservation and management of the properties vested in the temple:

(4) to ensure maintenance of order, discipline and proper hygienic conditions in the Temple and of proper standard of cleanliness and purity in the offerings made therein:

(5) to ensure that funds of the specific and religious endowments are spent according to the wishes, so far as may be known, of the donors:

(6) to make provision for payment of suitable emoluments to its salaried staff; and

(7) to do all such things as may be incidental and conducive to the efficient management of the affairs of temple and its endowments and the convenience of the pilgrims".

21. By an amendment made by Section 7 of Shri Jagannath Temple (Amendment) Act, 1961 (Orissa Act 19 of 1961) the control of Sevaks etc. was given to the Administrator. The new Section 21-A provides-

"All sevaks, office-holders and servants attached to the temple or in receipt of any emoluments or perquisites therefrom shall, whether such service is hereditary or not, be subject to the control of the administrator who may, subject to the provision of this Act and the requisitions, made by the Committee in that behalf, after giving the person concerned a reasonable opportunity of being

heard-

(a) withhold the receipt of emoluments or perquisites:

(b) impose a fine;

(c) suspend; or

(d) dismiss

any of them for breach of trust, incapacity, disobedience of lawful orders, neglect or wilful absence from duty, disorderly behaviour or conduct derogatory to the discipline or dignity of the temple or for any other sufficient cause."

It is to be noticed that "dignity of the temple" is the primary consideration in the matter of taking disciplinary measures against the Sevaks and other employees attached to the Temple.

22. It is thus abundantly clear that Shri Jagannath Temple is not an institution where material human needs are being met. It is primarily a spiritual institution. The Ballav that is prepared is offered to the deity as Bhog. It is therefore sold as Prasad. It is not that the Temple serves the purpose of a hotel for catering foodstuffs. The maintenance of order and discipline and proper hygienic conditions in the temple and of proper standard of cleanliness and purity in the offerings made therein, as required u/s 15(4) of the Shri Jagannath Temple Act 11 of 1955 quoted above, is for preserving spiritual atmosphere of the temple and for providing facilities to the pilgrims to have peaceful Darshan of the Deity. The primary object is spiritual. The petitioners are to maintain peace and tranquillity inside the temple. The duty of maintaining order and discipline inside the temple is different from the duty of the policeman to keep law and order outside on the public road. The duty of the petitioners inside the Temple is akin to that of teachers to maintain order and discipline inside a class room in an educational institution.

23. The petitioners relied on a decision of the Supreme Court in Raja Birakishore Vs. The State of Orissa, where the attack on Clause (1) of Section 15 of Shri Jagannath Temple Act (Orissa Act 11 of 1955) quoted above as interfering with the religious affairs of the Temple failed. The petitioners strongly relied on an observation made by their Lordships in paragraph 9 of the judgment that the rest of the provisions of Section 15 deal so obviously with secular matters that they have not been challenged. This argument on behalf of the petitioners herein before us, however, overlooks the reasoning of their Lordships which immediately followed in the subsequent sentences in the said paragraph. It is to be kept in view that what Section 15 lays down are the different duties of the Committee who are "to arrange for", "to provide facilities for", "to ensure", "to make provision" and "to do all such things" as the opening words of the different sub-sections of Section 15 read. This shows that these duties of the Committee are all of supervisory character. There must be somebody to superintend over these various things which are actually done by the Sevaks and other employees for or

connected with the seva-puja of the deity in the temple.

For instance, under Sub-section (4) of Section 15 the Committee is to ensure maintenance of order, discipline and proper hygienic conditions in the Temple and of proper standard of cleanliness and purity in the offerings made therein. This duty of the Committee "to ensure" is secular. But it is the petitioners who actually have to maintain order and discipline and proper hygienic conditions in the Temple and proper standard of cleanliness and purity in offerings made therein. This work of actual "maintenance" is connected with the Seva Puja of the deity inside the Temple. This is not a secular matter. Similarly Sub-section (2) of Section 15 lays down that the Committee is to provide facilities for the proper performance of worship by the pilgrims. Here, the Committee's duty to provide facilities is secular in nature. But the proper performance of worship itself is religious. It is in this view that the Supreme Court in the said judgment expressed:

"We are clearly of the opinion that Clause (1) imposes a duty on the committee to look, after the secular part of the seva-puja and leaves the religious part thereof entirely untouched. Further under this clause it will be the duty of the Committee to see that those who are to carry out the religious part of the duty do their duties properly. But this again is a secular function to see that sevaks and other servants carry out their duties properly; it does not interfere with the performance of religious duties themselves. The attack on this provision that it interferes with the religious affairs of the temple must therefore fail".

24. This view was also expressed by the Supreme Court in *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Shriur Mutt* 1954 SC 282 para 19 thus: If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character--all of them are religious practices and should be regarded as matter of religion.

25. In support of the petitioners' contention that they form an independent unit detached from the Temple, the petitioners rely on a decision of the Kerala High Court in *Travancore Devaswom Board, Trivandrum Vs. State of Kerala and Others*, where the Maramat (Repairs) Section of the Travancore Sebaswom Board functioning under the Travancore-Cochin Hindu Religious Institutions Act, 1950 was found to be an industry u/s 2(j) of the Act. The Kerala case is clearly distinguishable from the facts of the present case. Originally the Maramat Department consisting of Maistries, pump drivers, Lascars, watchers, fitters, electricians etc. formed part of the Public Work Department under Government. The powers of management and administration of the Devaswom had been

entrusted to the Travancore Devaswom Board. These employees came to be attached to the Maramat Department of the Board. With the transfer of the administrative control of the Devaswom Department from the Travancore State Government to the Head of the State, in about 1948, these employees, ceased to be employees of the Government, With the formation of the Devaswom Board in 1949, these employees in the Maramat Department become employees under the Board as a separate unit. In the present case, however, we cannot find that the petitioners who are Daffadars, Barkandajes, Ballav Gudias form an industry as an independent unit detached from the Temple.

26. In the ultimate analysis therefore the position is this: The main objective of an institution is always to be kept in view. In deciding the University of Delhi and Another Vs. Ram Nath, cited above the Supreme Court took into consideration the bigger objective, namely education, in rejecting the argument that University is an Industry. In the present case the spiritual side is the ultimate object of Shri Jagannath Temple. When the main objective is spiritual it cannot be an industry. The duties of the Committee are for the management of the temple to keep the temple in order and to see that there is no irregularity. The services of the petitioners were retained by the Temple administration for keeping order and discipline and for maintaining purity and also otherwise looking after the convenience of pilgrims who visit the temple for spiritual good. In no case can it be said that maintenance of the Temple is primarily for meeting material human needs. The petitioners' duties therefore, essentially appertain to the deities affairs in the Temple. It is clear from the Record-of-rights that the petitioners come under the category of Sevaks and employees for or connected with the Seva Puja of the Temple. It is not that the petitioners constitute as independent separate unit detached from the Temple. It cannot be said that the petitioners are organised or arranged in a manner in which trade or business is generally organised or arranged. Nor can it be said that the primary object of the petitioners' duties is to render material service to the community. Thus none of the features which are distinctive or activities to which Section 2(j) applies are present in the instant case.

27. It was also argued on behalf of the petitioners that it was only within the province of the Industrial Tribunal to decide the question whether or not the dispute comes within the purview of the Industrial Disputes Act, and that accordingly the State Government should not have refused to refer the matter to the Industrial Tribunal. There is no substance in this contention. The Supreme Court did not accept such a plea in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , (para 6). It is not that the 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, the appropriate Government may refuse to make a reference. Their Lordships held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in

dealing with a dispute u/s 10(1). In our view in the present case the argument that the Orissa Government exceeded its jurisdiction in expressing its prima facie view cannot be accepted. Here the Government was prima facie satisfied--and rightly--that the petitioners did not form an industry u/s 2(j).

28. In this view of the case, the writ petition fails and is dismissed. There will be no order as to costs.

G.K. Misra, J.

29. I agree.