

(1973) 09 KL CK 0015
In the High Court Of Kerala

Hindustan Construction Company Limited	APPELLANT
Vs	
All India Hindustan Construction Workers Union	RESPONDENT

Date of Decision : 07-09-1973

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10A

Citation : (1974) 2 LLJ 212

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Judgement

George Vadakkal, J.—The petitioner, the Hindustan Construction Company Ltd., (hereinafter referred as the company), is a public limited company carrying on construction work of Cement Concrete Gravity Dams for irrigation and hydro-electric projects, barrages for river valley projects, etc. The company is engaged in several kinds of works in different parts of India amongst which are the Idikki and Cheruthoni Dams in the Kerala State. It has about 4,600 employees in connection with Idikki and Cheruthoni Dam Works. It is averred in the petition that throughout India the company has about 25,000 employees.

2. The Federation of All India Hindustan Construction Workers' Union (for brief the Federation), a trade union of the employees of the company, on 2-4-1972 made certain demands, viz., (i) bonus for the year 1970-71; (ii) 40% wage/salary rise, with 10% interim relief; (iii) gratuity; (iv) yearly leave and travelling expenses; and (v) rest day wages at all branches. The first demand relating to the issue of bonus was settled through the good offices of the Secretary, Ministry of Irrigation and Power, Government of India. In respect of the remaining issues discussions were held by the representatives of the management and the Federation and ultimately they arrived at a settlement. Ext. P2 dated 8-10-1972 is that settlement. The Hindustan Construction Company Staff Association, Idikki (for short, the Association), respondent herein is a trade union affiliated to the Federation and is a party to Ext. P2 settlement. It is admitted in the counter-affidavit filed by the assistant secretary of the Association that he is a signatory

to Ext. P2. In the preamble to Ext. P2, it is stated as follows:

Regarding the difficulty of the management in not implementing this agreement relating to payment of allowances as relief as per para II hereafter at Idikki, the management clarified that Idikki is a special project wherein the Government of Kerala has considered the wage structure and has made a wage revision by a Government notification with effect from 22nd December, 1970. The Kerala Government has directed all the contractors working in the Idikki complex that no unilateral decisions will be taken either by the managements or unions but that all issues shall be settled through the Government machinery .

Relevant portion of para II referred to in the extract is as follows:

the management will pay every employee, both daily-rated as well as monthly-rated working at all branches, "except Idikki works at present", an allowance of Rs. 15 per month with effect from 1-8-1972 as advance relief in view of the rise in prices .

Clause XVI of Ext. P2 says that the agreement will come into effect from 1-8-1972 and shall remain in operation for a period of three years, i.e., upto 31-7-1975.

3. Shortly after Ext. P2 settlement the employees at Idikki began to express their dissatisfaction in keeping them out of the purview of Ext. P2. It appears that even at the time when Ext. P2 settlement was arrived at these employees were not happy for in Ext. P5, which is a reply sent by the Association to the Assistant General Manager of the company, it is said that the employees adopted go-slow tactics at Idikki from 6-10-1972 to 9-10-1972 as a protest against the pressure put on the Federation by the management to accept the settlement of 8-10-1972 excluding Idikki. By Ext. P3 dated 30-12-1972 the Association wrote to the Assistant General Manager of the company informing him that as per Ext. P2 every employee was to be paid an amount of Rs. 15 as an interim relief from 1-8-1972, that all discussions with the management to get Ext. P2 settlement implemented so far as Idikki employees are concerned turned infructuous, and that under these circumstances the employees have no other alternative but to mobilise all workers for direct action against the management to get Ext. P2 settlement implemented at Idikki. Ext. P3 continues to say that the key volunteers of both the Federation and the Association would be staging a hunger strike as a first step in front of the Assistant General Manager's Office from 1-1-1973. The reply of the management is Ext. P4, also dated 30-12-1972. Therein the management pointed out that as per Ext. P2 settlement the Idikki employees are not entitled to payment of interim relief. It is in reply to Ext. P4 that Ext. P5 letter already referred to was sent by the Association to the Assistant General Manager. In Ext. P5 the Association stated that there are no Government orders preventing the settlement of the issue of interim relief, that the Government notification referred to in the first paragraph of the preamble to Ext. P2 concerned, not only the company's employees but all the employees

throughout the Idikki Project, and that the interim relief sought for is only a temporary compensation till the National Tribunal gives its award. In that letter the Association further said that they are not concerned wherefrom the company obtains the necessary funds and reiterated that they should be given the relief with immediate effect. This dispute between the management and the employee was ultimately agreed to be referred to arbitration u/s 10A of the Industrial Disputes Act, 1947 (for short, the Act). As required by that section they reduced the arbitration agreement to writing. Ext. P6 is that agreement, and is dated 5-2-1973. The matter in dispute was specified in the following terms:

Whether the payment of allowance of Rs. 15 per mensem paid as per agreement dated 8-10-1972 as advance relief in view of the rise in prices, to both the daily-rated as well as monthly-rated employees in all branches, except Idikki, is to be extended to the employees of Idikki works also .

Shri S. Gopalan, Labour Commissioner was chosen as the Arbitrator by the parties. His award in pursuance of Ext. P6 reference is Ext. P1 in this case, which is dated 2-5-1973. It was published in the Kerala Gazette dated 15-5-1973. The petitioner-company seeks to quash Ext. P1 award and to prohibit the 2nd respondent, the Arbitrator, from enforcing it.

4. The substance of the Arbitrator's findings is that Idikki workers are also within the ambit of Ext. P2 settlement, but implementation of the terms of that settlement so far as those workers are concerned was agreed to be put off " at present", which words according to the Arbitrator mean "just now". The argument advanced on behalf of the company, relying on the wording of the question (viz., "whether the payment of allowance of Rs. 15...is to be extended to the employees of Idikki works also",) that it involves an admission by the Association to the effect that Ext. P2 settlement as such is not applicable to the Idikki workers was not accepted by the Arbitrator. The Arbitrator found that, those workers " have not been absolutely excepted " but " they have been excepted at present ". The further argument on behalf of the company that the words "at present" refer to the period during which Ext. P2 settlement is to be operative, was also rejected by the Arbitrator. According to him those words " can only be interpreted to mean just now". He also held that "the question of payment of allowance to Idikki employees was left open ", and that, therefore, it is not a new demand so as to attract the bar provided for in Clause XVI of Ext. P2. The alternative stand taken by the company that the demand if not a new demand is an old demand which had been already settled by Ext. P2 was according to the Arbitrator unsustainable. The company in support of this argument strongly relied on the preamble to Ext. P2 and pointed out that Idikki workers were kept out of the ambit of Ext. P2 because of the "difficulty of the management" in implementing it so far as those workers are concerned in view of the Kerala Government's notification and directions in respect of all the workers of Idikki complex. According to the Arbitrator there was nothing in the preamble which rendered the Idikki workers " ineligible for the payment of

allowance in absolute terms ", The Arbitrator held:

Whatever be the motive, the fact remains, as already stated, that the Idikki employees were not categorically precluded from entitlement to this allowance.

and ultimately concluded:

It logically follows, then, that this advance relief in view of the rise in prices against demand for wage/ salary rise made by the Federation on behalf of the Association as well, cannot be denied to the employees represented by the Association.

The position cannot certainly be that the Idikki employees who are entitled to final payments that may become due on account of the award of the National Tribunal are not entitled to the interim payment of the allowance which itself is adjustable against such final payments.

* * * *

Another point raised before the Arbitrator for not extending the benefit of payment of allowance of Rs. 15 to the Idikki employees, was that the company's daily-rated employees at Idikki were already getting the benefit of an increase in emoluments to the tune of Rs. 46.80 by virtue of Minimum Wage Notification dated 31-3-1971 issued by Kerala Government as against Rs. 15 which is the increase the company's workers elsewhere would be entitled to us per Ext. P2 settlement. According to the Arbitrator:

Payment of Statutory Minimum wages cannot also disentitle the Idikki employees to the payment of the interim allowance which is to form part of amounts that may become due on account of the above said award of the National Tribunal and which is being paid by the company on an All-India basis.

The Arbitrator in dealing with this matter points out in Ext. P1 that the disparity in wage levels is not referred to or mentioned in Ext. P2 settlement as a reason for excluding the Idikki employees from the benefits envisaged by Ext. P2, The Arbitrator also noticed that the financial burden caused by the minimum wage notification dated 31-3-1971 is borne by the Kerala Star Electricity Board.

5. The main ground raised by the learned Counsel for the company is that Ext. P2 excluded Idikki workers for the reason that they were already getting the benefits conferred by Ext. P2. The learned Counsel submitted that the company agreed to pay its monthly-rated employees at Idikki Rs. 25 per month with effect from 22-10-70 in pursuance of the suggestion of the Kerala Government. It was submitted that the daily-rated workmen at Idikki got the benefit of the minimum wages notification, also with effect from 22-12-1970. Another point taken was that the Arbitrator (2nd. respondent) acted beyond jurisdiction and perversely in holding that the payment of interim relief to Idikki employees was left open by Ext. P2 settlement. It was also submitted that the 2nd respondent failed to take into account the fact that dearness allowance of the monthly paid workmen was

revised under Ext. P2 settlement and that this benefit was available to all the monthly paid workmen including those at Idikki. It was argued that the 2nd respondent committed a gross error in construing the preamble to Ext. P2 settlement. The petitioner's counsel strongly relied upon Clause XVI of Ext. P2 which provides that no new demand involving financial commitments will be raised.

6. We will first deal with the objection taken on behalf of the respondent-workers that no writ can be issued against the 2nd respondent to quash Ext. P1 award. In *A.T.K.M. Employees' Association Vs. Musaliar Industries (Private) Ltd. and Another*, M.S. Menon, C.J., and Govindan Nair, J (as he then was) affirming the decision of Velu Pillai, J. in *A.T.K.M. Employees' Association Vs. Musaliar Industries (Private), Ltd. and Another*, held that no writ can be directed against the Arbitrator appointed u/s 10A of the Act or his award for the reason that he is not an Arbitrator to whom by statute the parties must resort. A passage from the decision of Lord Goddard, C.J. in *A. v. Disputes Committee of the National Joint Council for the Graft of Dental Technicians and Ors.* [1953] Q.B. 704 : AIR [1953] 327 viz.,

There is no instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute the parties must resort.

was relied on and followed by the learned Chief Justice who delivered the judgment of the Court. Within a few months of that decision occasion arose for the Supreme Court to consider the position and legal status of an Arbitrator acting u/s 10A of the Act in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, The question that arose before the Supreme Court was whether an appeal would lie to that Court under Article 136 from an arbitration award u/s 10A of the Act. The Court said:

He (the Arbitrator) is not a tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal.

Earlier in that decision the Supreme Court said:

Therefore, even if the arbitrator appointed u/s 10A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226.

Gajendragadkar, J. who spoke for the Court, pointing out the distinction between Articles 136 and 227 on the one hand, and Article 226 on the other said:

Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders, of Courts or tribunals.... Like

Article 136, Article 227 also refers to courts and tribunals, and what we have said about the character of the arbitrator appointed u/s 10A by reference to the requirements of Article 136, may prima facie apply to the requirements of Article 227.

7. After the decision of the Supreme Court the question again arose in this Court in *Koru v. Standard Tile and Clay Works* 1964 I L.L.J. 102. Vaidialingam, J., relying on the Supreme Court decision held that writ petition is maintainable and that this Court can go into the grievances placed before it on merits. We are in respectful agreement with Vaidialingam, J., and hold that a writ will issue to an Arbitrator appointed u/s 10A of the Act to quash his award.

8. However, the question arises as to how far we can go into merits of the case ; and as to the extent of our jurisdiction to interfere with the findings entered by the Arbitrator. If the Arbitrator has travelled beyond the terms of reference, or if his findings are perverse (in the sense that they are based on no evidence at all or are altogether against the evidence itself, so that the findings can be said to be vitiated by errors of law apparent on the face of the record) this Court has power to interfere with the award under Article 226. Again if the Arbitrator rests his findings on irrelevant material or if he does not take notice of relevant materials, the award will not be sustained by this Court.

9. We will now examine the findings entered by the Arbitrator in the light of the above principles. It is here necessary to advert to some more portions of Ext. P2 besides the third paragraph of the preamble and relevant portion of Sub-clause (a) of Clause II thereof which we have extracted earlier in this judgment. These are the recital, paragraphs 1 and 1 of the preamble and Sub-clauses (a) to (c) of Clause II in Ext. P2 which read:

Short Recital

The Federation of All India Hindustan Construction Workers" Unions made demands on 2nd April, 1972 regarding (i) Bonus for the year 1970-71, (ii) 40% wage/salary rise, with 10% interim relief: (iii) Gratuity; (iv) Yearly leave travelling expenses; and (v) Rest pay wages at all branches. The issue of bonus for 1970-71 was settled with the good offices of the Secretary, Ministry of Irrigation and Power, Government of India. Regarding the remaining issues, discussions were held between the representatives of the Management and the Federation from time to time till 6th October, 1972, as a result of which, this settlement is reached between the parties on the following terms and conditions ;

TERMS OF AGREEMENT

I. Preamble:

In view of the spiralling prices, the management considers that relief is necessary to lowly-paid employees; in spite of its very unsatisfactory financial position. The other demands were also considered to reach a settlement for three years for the purpose of enabling the company to come out of its serious

financial difficulties. At the same time, it was considered necessary that some of the difficulties faced by the employees should be resolved to the extent possible so that a harmonious atmosphere will be created for carrying out the works efficiently and economically.

The representatives of the employee promised to co-operate with the management to establish a normal and peaceful atmosphere so that the works are executed according to the schedule. They requested to revise upwards the dearness allowance scheme of monthly-rated employees and to introduce a dearness allowance scheme for daily-rated employees. But in view of the management's financial difficulties, they agreed to take up this matter in adjudication by the National Tribunal and accepted the management's proposals for relief to daily-rated employees.

Payment of allowance as relief against demand for wage/salary rise:

(a) The management will pay every employee, both daily-rated as well as monthly-rated working at all branches, except Idikki works at present, an allowance of Rs. 15 (Rs. Fifteen only) per month, with effect from 1st August, 1972 as advance relief in view of the rise in prices. This allowance will not be considered for overtime, bonus, retrenchment compensation, gratuity, provident fund and notice pay, wherever payable. This allowance will be paid in full for working on all working days in a month, inclusive of authorised leave with pay and holidays with pay. For employees whose attendance is less than above, it will be paid proportionately less.

(b) The above-mentioned allowance at Rs. 15 (Rs. Fifteen only) per month is paid for increase in prices and is brought into force from 1st August, 1972 and will be in force till 31st July, 1973.

(c) Considering the Average AH India Consumer Price Index for the year from August, 1971 to July, 1972 as 240 (1949=100) the revision of this allowance for daily rated employees at all branches, except Idikki, will be made on 1st August, 1973 as per the rise or fall in the Average All India Consumer Price Index for the year from August, 1972 to July, 1973 and on 1st August, 1974 as per the rise or fall in the Average All India Consumer Price Index for the year from August, 1973 to July, 1974, at Rs. 2-50 (rupees two point five zero) per month per 5 (five) points rise or fall in the Average All India Consumer Price Index 240 for the year 1971-72 in addition to Rs. 15 per month. No such revision will be made in this allowance payable to monthly-rated employees, and they will continue to receive this allowance of Rs. 15 per month till 31st July, 1975.

The finding of the Arbitrator is, to use his language, that these clauses "except" the Idikki employees "at present" which phrase according to him means "just now, that is, at the time of making the settlement." (vide paragraphs 28, 30 and 46 of Ext. P2). However, in paragraph 30, he also finds " that the issue of payment of allowance to Idikki employees was left open." These findings are incomprehensible, being inconsistent. Ext. P2 settlement concerned with the

question of payment of interim allowance to the employees of the company and if Ext. P2 settlement covers Idikki employees, that issue could not be one which was "left open". On the other hand, if that issue was left open, Ext. P2 settlement does not include the Idikki employees. It appears to us, that the Arbitrator, in entering these findings was blowing hot and cold at the same time, and that these findings cannot stand together.

10. If the issue was left open the Arbitrator should have investigated the dispute regarding the extension of the benefits conferred by Ext. P2 on workers elsewhere independent of and de hors Ext. P2. This he has failed to do. He brushed aside the facts, which according to the company, were the reasons for excluding the Idikki employees from the operation of Ext. P2, and which were mentioned therein, as for example that the Idikki employees were already getting more relief under the minimum wage notification issued by the Kerala Government, and that the Kerala Government has directed that no unilateral decision would be taken either by the management or the unions. According to the Arbitrator "whatever be the motive, the fact remains, as already stated, that the Idikki workers were not categorically precluded from entitlement to this allowance". In our view, if the issue of payment of allowance is a question left open by Ext. P2, all these facts have to be taken into consideration in an investigation as to whether the Idikki employees are entitled to the benefits of the interim allowance of Rs. 15 per mensem provided for in Ext. P2. In other words, the Arbitrator has failed to consider relevant materials.

11. It is also necessary to point out that the Arbitrator has not taken note of the internal evidence furnished by Ext. P2 itself in interpreting the phrase "at present" in Sub-clause (a) of Clause II in Ext. P2. Sub-clause (c) of that clause provides for revision of the allowance on 1st August, 1973 and 1st August, 1974 so far as "daily-rated employees at all branches, except Idikki" are concerned. Further, as seen from Ext. P5 reply sent by the Association already referred to the Idikki employees resorted to "go-slow" from 6-10-1972 to 9-10-1972 (Ext. P2 was on 8-10-1972) "as a protest against the pressure put on the Federation by the management to accept the settlement of 8-10-1972 excluding Idikki". It also does not stand to reason to understand the phrase "at present" as meaning just now, that is at the time of settlement which according to the Arbitrator is 8-10-1972 ; and it is still more incomprehensible how the Arbitrator pushed back that date to 1-8-1972, with effect from which date Ext. P2 came into operation.

12. In our opinion, therefore, the Arbitrator has entered the findings on no evidence, at all and against (not the weight of) evidence itself. The findings are also perverse amounting to transparent errors of law as regards the construction placed on Ext. P2 settlement. The Arbitrator has failed to take note of relevant materials, and was carried away by irrelevant materials. We, therefore, quash Ext. P1 award. The Arbitrator is free to investigate the dispute and pass his award afresh in the light of the observations contained herein. There will be no order as to costs.

V.P. Gopalan Nambiyar, J.—I agree with the judgment delivered by my learned brother Vadakkal, J. on behalf of the Bench, but shall add a few words.

2. Ext. P2 settlement dated 8-10-1972 was between the representatives of the employees of the petitioner-company and the Federation of All India Hindustan Construction Workers Union, represented by seven of their representatives. Besides these, there were also other executive members of the Federation representing the branch units. Among them were three representing the Idikki Branch Unit also. In what is called "short recital", Ext. P2 sets out that the workers' union made demands on 2nd April, 1972, regarding (1) Bonus for the year 1970-71 ; (2) 40% wage/ salary rise with 10% interim relief ; (3) Gratuity ; (4) Yearly leave travelling allowance ; (5) Rest day wages at all branches. It was noted that the first of these issues was settled, and the remaining issues were discussed and resulted in the agreement set forth in paragraph II of Ext. P2 settlement. In the preamble to it, it was recorded that in view of the spiralling prices, the company considered that relief was necessary to the lowly paid employees in spite of its very unsatisfactory financial position, and the settlement was reached for three years to enable the company to tide over its financial difficulties. It was noted that the representatives of the employees had requested for an upward revision of the dearness allowance scheme of monthly-rated employees, and for an introduction of dearness allowance scheme for daily-rated employees. In view of the management's financial difficulties, this matter was agreed to be taken up in adjudication by the National Tribunal, and the management's proposals for reliefs to the daily-rated employees was accepted. The reasons for the management not implementing the agreement recorded in paragraph II of Ext. P2 at Idikki was stated to be that Idikki was a special project where the Government of Kerala had considered the wage structure and made a wage revision by a Government notification with effect from 22nd December, 1970, (under the Minimum Wages Act) and the said Government had also directed all the contractors working in the Idikki Complex that no unilateral decision was to be taken by the managements or the unions, and that all issues were to be settled by the Governmental machinery. Paragraph II of Ext. P2 recorded that the management was to pay every employee both daily-rated as well as monthly-rated, at all branches "except Idikki works at present" an allowance of Rs. 15 per month with effect from 1st August, 1972, an advance relief in view of the rise in price. This allowance was, so to say an ad hoc allowance paid for increase in prices, and was to be brought into force from 1st August, 1972. and to be in force till 31st July, 1973. The revision of this allowance for daily-rated employees at all branches except Idikki was to be made on 1st August, 1973 according to the rise or fall in the Average All India Consumer Price Index for August, 1973 to July, 1973; and on 1st August, 1974, according to rise or fall in the same Average Price Index for August, 1973 to July, 1974, at certain rates per month per point rise or fall. No such revision was to be made in the allowance payable to monthly rated-employees. This ad hoc allowance was to be adjusted against payments that they may become due to

the employees of the company under the award to be made by the National Tribunal against the demand of 40% wage/salary rise. Paragraph XV of the settlement provides that question regarding medical facilities, accommodation, protective wears, etc. were to be discussed and the guide lines laid down. Paragraph XVI stated that no new demands involving financial burdens will be raised by the Federation except for the issues referred to in this agreement. The agreement was to come into operation on 1st August, 1972 and to remain in force for a period of three years.

3. On the terms of the agreement there is little doubt that the Idikki workers were excepted from its scope. The reasons given for their being kept out of its purview are that the Government had just revised the wage-structure for daily-rated workers by their notification dated 31-3-1971 with effect from 22nd December, 1970; and that all issues in regard to Idikki works were to be settled by the Governmental machinery and not by unilateral decisions either by the management or by the unions. After the statutory notification which bettered the conditions of daily-rated workers Government had suggested an increase of Rs. 25 per head per month for the monthly rated workers and this was agreed to by the company. It was understood that this additional burden was to be borne ultimately by the Kerala State Electricity Board. Against this back ground the exclusion of Idikki workers from the benefits of Ext. P2 settlement is understandable. Whether Idikki workers were left out for the duration of the agreement, or only till they repudiated the agreement, or pressed for the extension of similar benefits to them, is a different matter. The Idikki workers agitated for extension or implementation of the benefits under Ext. P2 settlement to them (vide Ext. P3 dated 30-12-1972 and Ext. P5 dated 1st January, 1973). The issue was eventually referred by Ext. P6. The specific matter referred was:

Whether the payment of allowances of Rs. 15 per mensem paid as per agreement dated 8-10-1972 as advance relief in view of the rise in prices to both the daily-rated as well as the monthly-rated employees in all branches except Idikki is to be extended to the employees of the Idikki works also.

The Tribunal's view that the Idikki workers were also covered by Ext. P2 settlement seems to be opposed alike to the express terms of the settlement, no less than to the terms in which the specific matter in dispute was referred to the Tribunal. The issue referred posits that the Idikki workmen were outside the purview of the settlement and were seeking an extension of its provisions to them. The Tribunal's view to the contrary cannot be sustained. If they are not covered by Ext. P2 settlement, they are not entitled to get the benefit-of the ad hoc allowance agreed to be paid from 31-8-1972. Tribunal was, therefore, wrong, in holding that the Idikki workers were entitled to the benefits of the agreement from 31-8-1972. It had, of course, jurisdiction to consider whether, de hors the terms of Ext. P2, the Idikki workers had made out any case for extension of the ad hoc allowance, to them also. In that case they would not get the allowance from the date agreed to in Ext. P2. From what other date they would get it,

whether from date of demand or date of repudiation of the agreement, etc., are matters for the Tribunal to decide. The Tribunal has not approached the question this way. It has completely misread and misunderstood the provisions of Ext. P2 settlement, and clothed itself with a jurisdiction which it could not have, if the agreement had been properly construed and understood. I agree, therefore, that Ext. P1 award should be quashed and the Tribunal should be asked to go into the matter afresh in accordance with law.

4. I agree also that in the light of the judgment of this Court in *Koru v. Standard Tile and Clay Works (P) Ltd.*, *Feroke* 1964 I L.L.J. 102 a writ can issue under Article 226 against the statutory Arbitrator u/s 10A of the Industrial Disputes Act. That being the position, the preliminary objection raised that no writ can lie against the statutory Arbitrator under that section of the Industrial Disputes Act is groundless and without force.

5. I agree to the order proposed by my learned brother Vadakkal, J.