
(1981) 05 AHC CK 0025
In the Allahabad High Court

Indian Explosive Ltd. (Fertiliser Divison)	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 14
Constitution of India, 1950 — Article 226, 324
Representation of the People Act, 1951 — Section 133

Citation : (1981) 2 LLJ 159

Hon'ble Judges : Yashodanandan P.S. Gupta, J

Bench : Single Bench

Judgement

Yashodanandan, J.—The Indian Explosives Limited is a public Limited Company registered under the Companies Act, 1956, and is engaged in the business or manufacture and sale of explosives and fertilisers. The petitioner before us is its Fertilizer Division having its factory at Panki, Kanpur. By means of this petition under Article 226 of the Constitution, the petitioner prays for writ in the nature of certiorari or any other writ, direction or order to quash and or set aside the Reference Order made by respondent No. 1, the State of Uttar Pradesh, dated 6th September, 1977, and the order of respondent No 2, the Industrial Tribunal III, Uttar Pradesh, Kanpur, dated 18th December, 1978 disposing of certain issues framed as a consequence of the written statement filed by the petitioner raising certain preliminary objections.

2. The material facts on the basis of which this petition is based are that disciplinary proceedings were commenced by the petitioner against 16 of its workmen, 11 of whom having been impleaded as respondents 4 to 14 in this petition. The workmen did not appear at the domestic enquiry and consequently on the basis of the ex parte findings recorded during enquiry proceedings, orders for dismissal were passed against all the 16 workmen. An industrial dispute having been raised, by an order dated 12th June, 1973 respondent No. 1, referred to the Industrial Tribunal 1, Allahabad, certain issues between the petitioner and its workmen including the propriety of the dismissal of the

aforesaid 16 workmen. During the pendency of the aforesaid reference, the petitioner and its workmen entered into what has been described as a "Settlement" on the 16th July, 1973 duly signed by the parties including the dispute regarding the dismissal of the 16 workmen. The settlement, inter alia, provided that the question whether the termination of the services of the aforesaid 16 workmen was justified and or legal would be referred to Sri B. B. Lal, Adviser to the Governor, U. P. and "his findings will be binding on both the parties. The so-called Settlement further provided that both the parties would submit a petition to the State Government to withdraw the Adjudication Case No. 4570 dated 12th June, 1973 in respect of issues covering dismissal and lay-off of the workmen aggrieved. The Settlement is purported to have been registered in accordance with the requirement of Section 6 B (3) of the U. P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the 31st July, 1973. Pursuant to the joint application by the petitioner and its workmen, respondent No. 1 by means of an order dated 27th August, 1973, withdrew the dispute referred to it from the Tribunal seized of the Reference. Nonetheless, perhaps because the order of the State Government had not been communicated to the Industrial Tribunal, it passed an ex parte Award dated 27th August, 1973 to the effect that the petitioner was Justified in dismissing the 16 workmen. On the 25th September, 1977, the Government of Uttar Pradesh stayed the enforcement of the above mentioned Award and subsequently on the 26th September, 1973 rejected the same. Sri B. B. Lal started reviewing the orders regarding the dismissal of the 16 workmen as contemplated by the Settlement relied upon by the petitioner. It is stated that the hearings held by Sri B.B. Lal on various dates the representatives of the petitioner as well as 16 workmen affected, the Labour Union and also the Labour Department of the Government of Uttar Pradesh were present. It is alleged that the 16 workmen including respondents Nos. 4 to 14 and the Union (respondent No. 3) which has espoused their cause, unreservedly participated in the proceedings and raised an objection to the competence or jurisdiction of Shri B. B. Lal to decide the matter referred. On the 8th November, 1973, Sri B. B Lal passed an order giving findings regarding the dispute and held that the dismissal of 11 out of the 16 workmen was justified and orders of dismissals for the remaining workmen were to be modified. Sri Lal recommended that the management should pay 1/3rd of basic wages and dearness allowance for the period of lay-off as an ex gratia payment. It is claimed that the petitioner fully implemented and gave effect to the findings of Sri B. B. Lal, which, according to the Settlement, were binding on all parties, Five of the employees, who had been dismissed, were reinstated and the petitioner did not reinitiate proceedings against one of the workmen and also accepted recommendation of Sri Lal and paid the workmen who had been laid-off 1/3rd of their wages as ex gratia amount. Respondent Nos. 3 to 14, who remained dissatisfied with the order of Sri Lal filed a writ petition in this Court which was dismissed as being premature. Respondent No. 1 having been moved by respondent No. 3 to make a reference u/s 4-K of the Act of an industrial dispute relating to dismissal of respondent Nos. 4 to 14 rejected the representation on the ground that the

Award of Sri B. B. Lal was final and binding on the parties. Respondent Nos. 3 to 14 thereupon filled in this Court Misc. Writ Petition No. 6004 of 1974 challenging the decision of the State Government refusing to make a reference of the dispute. It is alleged that in that writ petition a counter-affidavit was filed on behalf of the Government of Uttar Pradesh wherein the stand was taken that the findings given by Sri B. B. Lal were binding on both the parties to the dispute and since some of the workmen had already availed of the benefits given by Sri Lal it was not open to the petitioner to challenge the remaining part of the findings which went against the workmen. On the 22nd August, 1977, an application was made by the petitioner in Misc. Writ Petition No. 6004 of 1974 that it may be dismissed as "not pressed" since the workmen had been given an assurance by the then Labour Minister that their case would be referred for adjudication to the Labour Court or Industrial Tribunal. On the same day consequently this Court dismissed the aforesaid writ petition in terms of the application made on behalf of the writ petitioner. On the 6th September, 1977, the Government of Uttar Pradesh made the impugned Reference u/s 4K of the Act to respondent No. 2 regarding the dismissal of 11 workmen, i.e., respondents Nos. 4 to 14. The petitioner filed a written statement raising number of preliminary objections and subsequently on the 8th November, 1978 made an application for amendment of its written statement by adding additional ground. The application for amendment was rejected by the Tribunal but ultimately this Court by an order dated 2nd May, 1979, allowed the writ petition filed by the petitioner challenging the order of the Tribunal refusing to permit amendment to the written statement and directed the Tribunal to allow the amendment application. By means of the order dated 18th December, 1979, which is under challenge in this petition, respondent No. 2 rejected the preliminary objection of the petitioner that the order of Reference is bad in law. The two preliminary issues decided against the petitioner were framed as follows:

(1) Whether the present dispute is not an industrial dispute in view of the objections raised by the employers in paragraph-57 of their written statement and

(2) Whether the Order of Reference is bad in law in view of the objections raised by the employers in paragraph-57 and paragraph 56-A of their written statement.

3. In view of the Supreme Court decisions in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, *Binny Ltd. Vs. Their Workmen*, and *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, Sri Soli Sorabji did not contend that once the Government had declined to exercise its power u/s 4-K of the Act it had no jurisdiction left on a reconsideration of matter to, at a later stage, make a reference under that provision. He also did not contend and in our view rightly so that it is necessary for the Government to hear the management or the workmen concerned in some form or the other before making a reference in the first instance itself. He, however, contended that once the Government had refused to make a reference because either in its opinion there was no industrial dispute or it was not

expedient to make one, the employer could act on the expectation that there would be a quietus and to proceed to arrange his affairs on that basis and if the Government in respect of the same dispute altered its mind at a later stage, it was incumbent on it to bring to the notice of the management the material on which it proposed to make a reference and to take into consideration the management's version before taking a decision to refer the dispute for adjudication. He relied on the decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Smt. Menka Gandhi v. Union of India* AIR 1978 S.C. 587 and *Mohinder Singh Gill v. Chief Election Commissioner* AIR 1978 S.C. 875 for the contention that the principles of natural justice were attracted even to an administrative decision if the Civil rights of a party were affected or his or its legitimate expectations were jeopardised. He submitted that in the *Western India Match Co., Ltd., Binny Ltd., and The Avon Services Production Agencies* cases this question had neither been raised nor decided by the Supreme Court. He pressed in aid the judgments of the Madras High Court in *K. Abdul Salam and Co. v. State of Tamil Nadu* 1973 43 F.J.R. 180, decided by Rama Prasad Rao, J., *Tiruchi Rolling Mills v. Gnanasumundran* (1974) 46 F.J.R. 158 decided by K. Veeraswami, C.J., and *Vardarajan, J. Shanthi Theatre (P.) Ltd. Madras v. State of Tamil Nadu and Ors.* (1974) 55 F.J.R. 389, *G. Matukrishnan v. The Administrative Manager, New Horizon Sugar Mills Pvt.* 1980 I L.L.J. 215 decided by a Full Bench consisting of Ramaprasad Rao (sic) and Rimanujam, JJ. and *American Express International Banking Corporation v. Union of India and Ors.* (1979) 39 F.L.R. 122 decided by Manas, Nath Roy, J., which do support his contention.

4. Sri K. P. Agrawal, representing the contesting respondents, on the other hand, relied on the decisions of the Kerala High Court in *Abdul Rahiman Haji v. Abdul Rahiman and Ors.* I.L.R.(1979) 39 357, decided by V.P. Gopalan Nambiyar, C. J., and *Balaganghadharan Nair, J., E.G. Verghese v. Secretary of Staff Union* (1976) K.L.T. 842 and *Kirloskar Electric Company Limited Vs. Workmen of Kirloskar Electric Company Limited*, , decided by E.S. Venkatramiah, J.

5. We propose to consider the question raised to start unembarrassed by the several decisions of the High Courts relied upon by Sri Soli Sorabji.

In the quest for justice under the rule of law there has been no more spontaneously acceptable idea than the principle embodied in the maxim *Audi alter urn par tern*.

There is a noticeable enlargement of the tendency at present to apply the principle embodied in the maxim to a wide range of decision making processes yet there was a lingering judicial ambivalence on the question as to whether it was applicable to decision of a purely administrative character or was confined in its operation to judicial and quasi-judicial proceedings alone. The three judgments of the Supreme Court in *A.K. Kraipak's*, *Smt. Menka Gandhi's* and *Mohinder Singh Gill's* cases in the sphere of administrative law set at rest all doubts, if any, on the subject. It may be noticed here, however, that in *A.K. Kraipak's* case

it was merely held that the requirement of absence of bias holds good to selections to public services and it was not concerned with the question whether a party had a right to pre-hearing in circumstances such as we are dealing with. In Meneka Gandhi's case the Maxim Audi-al-terumpartem was applied where the decision affected the fundamental rights of Smt. Meneka Gandhi. In Mohinder Singh Gill's case the Supreme Court applied that principle to a decision which affected the appellant's legitimate expectations to a civil right, namely, to be declared elected to a Parliamentary seat which was put in jeopardy by an order of the Election Commission purporting to have been passed in exercise of powers vested in it under Article 324 of the Constitution, Section 133 of the Representation of People Act, 1951 and all other powers enabling it so to do to cancel the poll which had already taken place in the constituency.

6. None of these decisions are authorities for the proposition that the precepts of natural justice are of universal application to all administrative actions in respect of the characteristics of the proceedings or its impact on those concerned. Instead of indiscriminately applying the maxim, we must keep in mind the note of warning sounded by Lord Denning, M. R., when he said that "this rule of common law is a powerful weapon to prevent injustice but like all powerful weapons it can cause great damage if it is not used skillfully and properly." Natural justice has been equated with "fair-play in action" *Wiseman v. Borneman* [1971] A.C. 297. What is the test to be applied to determine as to whether in a particular situation fair-play requires that a party be heard before an administrative decision is taken. In answering this question, we must take into account not only the nature and characteristics of the proceedings resulting in the decision but also invariably the gravity of the consequences of the decision.

7. The Division Court in *R. v. Aston University Senate Ex. P. Roffans*. [1969] 2 Q.B. 538, took into account the fact that "so much (was) at stake." In *Schmidt and Anr. v. Secretary of State for Home Affairs* [1969] 2 Ch. Div. 149, Lord Denning M.R. Stated:

The speeches in *Ridge v. Baldwin* [1964] A.C. 40, show that an administrative body may in a proper case be bound to give a person who is affected by their decision an opportunity of making representation. It all depends on whether he has some rights or interest or I would add some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say.

Thus unless some Civil rights of a party are affected or his legitimate expectations to some rights are jeopardised the principles of natural justice are not attracted, It may be clarified here that when we speak of civil rights we do not mean merely property rights but civil rights in the sense expounded by Krishna Iyer, J.: in *Mohinder Singh Gill's* case. To attract the principles of natural justice the deprivation of civil rights must take place directly and inevitably as a result of the administrative decision itself and not only incidentally or as a secondary result to borrow the language used by Ormrod, L.J. in *Norwest Hoist Ltd. v. Secretary of State for Trade and Ors.* [1978] 1 Ch. Div. 202, merely as

unfortunate side effects.

8. Considerable light is thrown on the question as to in what exigencies the principle of pre-hearing is excluded in the decision of P. N. Bhagwati, J., in *Menaka Gandhi's* case wherein he observed as follows:

Now, it is equally true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly or to use the words of Lord Morris of Berth-y-Gest from "fair-play in action", it may equally be excluded where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in *Judicial Review of Administrative Action*, 2nd Edn. at page 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair-play in administrative action. The word "exception" is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to "fair-play in action" but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the laws lifeless absurd," stultifying, self defeating or plainly contrary to the common sense of the situation.

9. Just as there is no escape from the conclusion that anybody making a decision which adversely affects the rights of a party or jeopardises his or its legitimate expectations must observe the rule of natural justice it is equally true conversely that a decision which does not directly effect anyone's civil rights because for example it is merely a prelude to further proceedings in the course of which the parties concerned would have a right to be heard before an impartial tribunal will not itself be subject to the requirements of natural justice. Reference here might be made to the decision in *Regina v. Barnet and Camden Rent Tribunal Ex parte Frey Investments Ltd.* [1972] 2 Q B. 342, to which we shall later refer to as *Frey's* case. u/s 72(1) of the Rent Act, 1968 which was under consideration either the lessor or lessee or a local authority could refer contracts of tenancy to the Rent Tribunal of the district in question, Salmon, L. J. while holding that it was of the utmost importance to uphold the right and indeed the duty of Courts to ensure that the powers conferred on a local authority or the executive shall not be exercised unlawfully when the exercise of such powers affects the basic rights of an individual took, the view that "cases such as these in which a licence is being sought for the purpose of enabling the applicant to carry on his business and earn a living, or in which town planning permission is sought, or a compulsory purchase order is being challenged, vitally affect the basic rights of the persons concerned and seem to me to differ very substantially from the case we are now considering. In a case such as the present, no decision is taken by

the authority invested with a power which vitally affects the basic rights of the individual. The only decision taken by the local authority is to refer the matter to the rent tribunal so that the rent tribunal may consider whether or not the rent is too high. The party concerned (that is to say, the landlords) have every opportunity of appearing before the tribunal and it is the decision of that tribunal which affects their basic rights." Reference might also be made to the judgment of the Court of Appeal in *Norwest Hoist Ltd. v. Secretary of State for Trade* (supra). Section 165(2) of the Company's Act, 1948 to the extent relevant was in the following terms:

Without prejudice to their power under the last foregoing section, the Board of Trade-(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report there (b) may do so if it appears to the Board that there are circumstances suggesting...(ii) that the persons concerned with its formation or the management of its affairs having in connection therewith been guilty of fraud, misfeasance or other misconduct toward it or towards its members....

It was under this section that the Minister appointed two gentlemen Mr. Davies and Mr. Harding, Queen's counsel and a Chartered Accountant as inspectors to investigate the affairs of the *Norwest Hoist Ltd.* The Secretary of the Company wrote to the Secretary of State that he had been instructed by the Board of Directors of the above named company that it did not appear to the board that there were any circumstances which would justify the exercise of his discretionary power under the section to appoint inspectors. He went on to say that it had, therefore, instructed him to request the Secretary of State or disclose to it the circumstances, together with an indication of the evidence in support thereof upon which he relied in exercising or purporting to exercise the discretionary power to appoint inspectors. The Secretary of State relied that there was no requirement laid down in the Act to provide this information, and the appointment had been made under the provisions contained in Section 165(h) (ii), The group secretary of the Company replied back that,

...Your reference to the provisions of Section 165(b)(ii) of the Act places a wide category of persons within the company under possible suspicion of having been guilty of most serious offences. The Board considers that the failure of the Secretary of State to give any indication of the nature of the alleged offences of the person or persons allegedly responsible, seems hardly just or equitable....

As the Secretary of State has declined to disclose the information requested in my letter of March 25, it is not accepted that Mr. Davies and Mr. Harding have been validly and lawfully appointed as inspectors to investigate the affairs of the company.

The Secretary of the company was informed by means of a letter from the Secretary of State's private Secretary that the Secretary of State had no intention of withdrawing the appointment, and, in the circumstances, it was for

the Board to take such action as it might be advised. The company made a motion for summary judgment under R.S.C. Order 14. Another motion was made by the department of Trade for an order that the plaintiffs action be struck out. One of the grounds on which the company sought relief was that in appointing the inspectors the Minister had acted in violation of the principles of natural justice since the appointments had been made without the company being informed of the material before the Minister on which he had been led to make the appointment of the inspectors and without giving it an opportunity of being heard in opposition to the proposed appointments. Foster, J., rejected the contention. He relied on the decision of Megarry, J., in *Asher v. Secretary of State for the Enforcement* (un-reported decision) from which the relevant passage has been quoted in extenso in the decision as reported. The passage relied by Foster, J., was as follows:

In the Frey case, (supra; the decision of the authority was merely to refer certain tenancy agreements to a rent tribunal, the substantive decision whether or not to reduce the rents would be made by the rent tribunal after a hearing of the contentions on either side, and was not being made by the local authority.... Now in this case the decision of the Secretary of State is a mere decision to order an extraordinary audit. Like the local authority in Frey's case he has no power to demand information before deciding whether or not to order the audit. Like the rent tribunal in Frey's case, on the other hand the district auditor has wide powers to require information to be provided: see Section 225 of the Act of 1933. Both on the authority of Frey's case, and on principle, I would hold that in deciding whether or not to order an extraordinary audit the Secretary of State is bound not by the *Wednesbury* standards but by the Frey's standards.

Before the Court of Appeal again it was argued that the principles of natural justice applied and accordingly both sides should have been heard before the inspectors were appointed. The contention was repelled by Lord Denning, M. R., who held that:

There are many cases where an inquiry is held not as a judicial or quasi-judicial inquiry but simply as a matter of good administration. In these circumstances there is no need to give preliminary notice of any charge, or anything of that sort....

So also with the appointment of inspectors, u/s 165(b)(ii). The Inspectors are not to decide rights or wrongs. They are to investigate and report. This inquiry is a good administrative arrangement for the good conduct of companies and their affairs. It is not a case to which the rules of natural justice apply. There is no need for them to be given notice of a charge, or a fair opportunity of meeting it....

All we are concerned with is Section 165. As to it, I would say that, so long as the minister acts in good faith, it is not incumbent upon him to disclose the material he has before him, or the reasons for the inquiry

Ormrod, L. J. agreed with the conclusion reached of Lord Denning in the following words:

In the present case we are concerned with the making of a decision by the minister to appoint inspectors u/s 165(b) of the Companies Act, 1948. The purpose of the appointment is to investigate the Company in order to find out what has been going on in other words, to find the facts. At such an inquiry the company and its officers will be asked to answer the allegations or complaints against them, if there are any, and give any explanation which they wish to give. So in this case what we are concerned with is only the preliminary stage, the decision of the minister to appoint inspectors. It is said that such an appointment is likely to damage the company whose affairs are to be investigated, therefore, the minister must act in accordance with the ordinary principles of justice which means notifying the company of the basis on which the investigation is to proceed and giving it an opportunity, in advance, of being heard.

In my judgment the ordinary principle of natural justice do not require anything of the kind. At this stage the minister is not required to notify the company or seek its Comments before ordering an investigation. It is only necessary to refer very shortly to a passage in Lord Reid's Speech in *Wiseman v. Borneman* (supra) which is conveniently cited in Sachs L.J.'s judgment in the *Peragamon Press* case [1971] Ch. 388, 403. The passage reads:

Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case, but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party.

To my mind that passage applies precisely to the present case. The only conceivable distinction between the present case and that passage is the use of the words to prosecute or raise proceedings. Here the raising of proceedings has taken the form ordering an investigation by the inspectors at which the person involved will have their opportunity of stating their case. That, to my mind, is a distinction without a difference....

But it seems to me it is quite impossible as Mr. Brodie in argument would require him to do in reaching that decision, which is simply a decision to cause further inquiries to be made, to hear what the company has to say about it in advance. It is unfortunate if the announcement by the minister that he is appointing inspectors causes damage to the company's trading position or its credit or, if it causes great inconvenience or puts the company to expense, but all these are unfortunate side effects of the absolute necessity that some one should exercise some form of supervision over the activities of a limited company." (Emphasis supplied,).

Geoffery Lane, L.J., agreed with the other two learned law Lords.

10. Thus, it has been recognised by Judges of undoubted eminence that a decision on substantive rights of parties is one thing and a mere decision that another body investigate and decide on those substantive rights is quite another, and the principle of hearing is not applicable to the latter class of cases.

11. We might next consider the question as to what is meant by "legitimate expectations" when it is used in connection with the question as to whether the principles of natural justice are attracted. This expression occurs in the judgment of Lord Denning, Master of the Rolls, in *Schmid v. Secretary of State of Home Affairs* (supra), to which our attention was invited during the course of this arguments by Sri Soli Sorabji. The relevant passage has been extracted in an earlier part of this judgment. He illustrated what he meant by giving the example of an alien whose permission to stay in the United Kingdom had been, before the expiration of the term originally granted, withdrawn. In such circumstances he, according to the Master of Rolls might well have a right of hearing because he had legitimate expectations that he would be allowed to stay for the period for which permissions had been originally granted. *Schmidt*, it was held, however, had no right to a hearing because he had been allowed to stay for the period originally granted. He might have hoped but had no reason to build up a legitimate expectation that he would be granted permission to stay beyond that period. A very similar view was expressed by Widgery L.J., who stated that:

But here again the alien who has entered with a permit giving him a period of residence has no kind of right to require an extension of that period. The position is exactly the same as that of a man who takes a lease of a house for three months and wishes to renew it for a further period. The landlord can reject his application out of hand. No question of natural justice or anything of that kind arises because there is no right in the tenant which can be infringed.

12. Paul Jackson in "Natural Justice" II Edn. page 109 has noticed the distinction between "Legitimate expectation" and a mere hope in the following words:

As example of (he distinction between a legal right or legitimate expectation, on the one hand, and personal disappointment at an unwelcome decision on the other, is provided by *Brown v- A.U.E.W.* [1976] I.C.R. 147. A and B had been candidates in union election. A won but the executive council set the result aside and ordered a second election. A appealed to the union appeal body which upheld the contention that the executive council had no right to set aside the first result. In the meantime, however, the second ballot had been held, in which B obtained the greater number of votes. B claimed that he had a right to be heard by the appeal body before it reached its conclusion on the validity of the executive council's decision. Walton, J., found, on the true construction of the rules, that the council had no power to set aside the first ballot, and hence the appeal body had no option but to reach the conclusion it did. However, the learned Judge went on to say that in any case B's claim to a hearing would have failed because the dispute or lis was between A and the executive council. Although B in one sense, had an interest in the outcome of the proceedings no

legal right of his was at stake. He had entered the "second election on knowing that it might turn out to be a nullity". "Legitimate expectations" thus cannot be synonymized with "wishful hopes".

13. The various judgment of the High Courts on which Sri Soli Sorabji placed reliance in support of his contention drew their inspiration from the observations made by the Supreme Court in *Western India Match Company Ltd. v. Western India Match Co, Workers Union* (supra.), *Binny Ltd. v. Their Workmen* (supra) and *Avon Services Production Agency (P.) Ltd. v. Industrial Tribunal, Haryana* (supra) and consequently becomes necessary to analyse these decisions in some detail.

14. In *Western India Match Company* case (supra), one of the contentions raised by counsel for the appellant-company was that the Government having once declined to refer the dispute, could not change its mind after a lapse of nearly six years since the dispute arose and through the expression ""at any time" in Section 4-K did not apparently signify any limit it must be construed to mean that once the Government had refused to make the reference after considering the matter and the employer thereupon had been led to believe that the dispute was not to be agitated in a tribunal and had consequently made his sown arrangement the Government cannot, on a further agitation by the Union, take a somersault and decide to refer for adjudication. The contention was repelled by the Supreme Court in the following words ;

As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer, exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence...

In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference.... The reason given in these decisions is that the function of the Government either u/s 10(1) of the Central Act or a similar provision in a State Act being administrative principles such as *res judicata* applicable to judicial Acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial

opinion, according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later state. In this view, the mere fact that there has been a lapse of time or that a party to the dispute, was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief does not affect the jurisdiction of the Government to make the reference....

It is true that where a Government reconsiders its previous decision and decides to make the reference, such a decision might cause inconvenience to the employer because the employer in the meantime might have acted on the belief that there would be no proceedings by way of adjudication of the dispute between him and his workmen. Such a consideration would, we should think, be taken into account by the Government whenever, in exercise of its discretion, it decides to reopen its previous decision as also the time which has lapsed between its earlier decision and the date when it decides to reconsider it. These are matters which the Government would have to take into account while deciding whether it should reopen its former decision in the interest of justice and industrial peace but have nothing to do with its jurisdiction u/s 4-K of the Act. Whether the intervening period may be short or long would necessarily depend upon the facts and circumstances of each case, and, therefore, in construing the expression "at any stage" in Section 4-K it would be impossible to lay down any limits to it.

In the present case though nearly four years had gone by since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and, therefore, required its consideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power....

When the Supreme Court observed that consideration of the inconvenience which may be caused to the employer because of lapse of time between the two decisions is a matter which the State Government should take into account it did not, in our opinion, mean to say that the power of the Government u/s 4-k is rendered nugatory or gives rise to a right to the management to be heard before the Government subsequently does make a reference. It merely suggested that in all fairness the Government is expected to take such matters into account while making a reference and yet explicitly held that these are matters which have nothing to do with the power or jurisdiction of the Government to act u/s 4-k. In fact, as held by the Supreme Court when in the first instance the Government either by omission or by a positive order declines to make a reference, there is no exercise of the power u/s 4-k of the Act and, therefore, in our opinion when the State Government ultimately does choose to make a reference the question of affording the management an hearing before taking a different decision does not and cannot arise.

15. In *Binny Limited v. Their Workmen* (supra) we are unable to discover any observation which can be of any help to the petitioner in support of the contention that if at one stage the Government had declined to make a reference it must act either only when fresh material comes to its notice which were not in existence earlier or not within its knowledge at the time when it declined to make a reference or because it had done so on account of some misapprehension or that it must hear the management before passing an order of reference either u/s 10 of the Central Act or u/s 4-k of the Act.

16. In *Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal Haryana and Ors.* (supra) the Supreme Court while disposing of an argument similar to that advanced in *Western India Match Company Ltd. v. Western India Match Co. Workers Union* case (supra) observed;

It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. But it was urged that the ratio of the decision would show that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference.

It is not absolutely necessary that there ought to be some fresh material before the Government for reconsideration of its earlier decision. The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration and such other relevant consideration may include the threat to industrial peace by the continued existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power u/s 10(1), the exercise of the power would be a positive act of making a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The power to make the reference remains in tact and can be exercised if the material and relevant consideration for exercise of power are available, they being the continued existence of the dispute and the wisdom of referring it. in the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all existed, stands solved. On the contrary the refusal to make a reference not compelling the parties to come to a talking table or before a quasi judicial Tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute has ceased to exist and the very existence of the dispute enables the Government to exercise the power

u/s 10(1) and it has been rightly exercised. The view which we are taking is in accord with the decision of this Court in *Binny Ltd. v. Their Workmen* (supra).

In this case the Supreme Court clearly rejected the submission that if the Government had on an earlier occasion declined to make a reference unless it is shown that there was some fresh material before it a second reference would be incompetent. It positively rules that the continuance of the industrial dispute is by itself a relevant consideration.

17. Applying the tests discussed above and keeping in mind the nature of the decision, other practical consideration and the consequence on the parties as well as the community at large; we are clearly of the opinion that neither the employer nor the workmen can claim any right to be heard before an order of reference is made either initially or on second thoughts. Concentration of the other means of production in few hands on the one and a growing awareness of their rights by the exploited and now organised labour on the other gave rise not often to class struggle and strife in the industrial and commercial segment of the society which carried imminent danger of not only disturbing the law and order situation but also disrupting production and distribution of commodities necessary for the economic well being of the nation. While a contented labour force can play an all important role in making a meaningful contribution to the progress and prosperity of the nation a frustrated and desperate working class living practically on the verge of starvation with little to lose is possessed of an unfathomable capacity to destroy even if it may involve self-immolation. Legislatures and Governments responsible for the national weal could not understandably remain idle spectators of the grave and perilous consequences which existing or apprehended industrial disputes could effectuate. The Legislatures consequently rightly undertook the task of passing enactments to facilitate expeditious resolution of such disputes and to ensure truce meanwhile in the manner provided for by such legislations. When an order is passed u/s 4-k of the Act, the power in substance is exercised on behalf of the public at large and in the interest of the community. Conflict between workmen and the employers is fraught with the potentiality of without a moment's notice erupting into a ruinous conflagration imperilling the industrial and financial stability of the country. It was to meet such critical and sensitive situations that the Government was armed with such powers as are exercisable u/s 3(b) and 4-k. The nature of the power that is exercisable u/s 4-k and the objective to secure which it has to be used rules out by necessary implication the existence of any in-built processual requirement of notice and hearing. It is inconceivable that the Legislature could ever have intended that while an industrial dispute was building up and immediate action on the part of the Government is imperatively needed to ensure a cease-fire arrangement in the industrial and commercial area between the disputants it should be required to go through the self-defeating ritual of issuing notices and hearing the parties we have advisedly used the word ritual because in such circumstances notice to and hearing parties would amount to nothing else in view of the fact that a decision to make a reference u/s 4-k

beyond causing some inconvenience not to one alone but to both parties does not by itself decide any of the issues in controversy. An order of reference of its own force, does not affect substantive right of the parties, which have to be ultimately decided by the Industrial Tribunal of the Labour Court when it comes to be seized of the adjudication case. In the proceedings before the Industrial Tribunal or the Labour Court the parties to the dispute have a right to lead evidence, to cross-examine witnesses and to a full-fledged hearing. It is the award rendered which really affected the rights of the parties. We are consequently of the view that the principles laid down in *Prey's* and *Norwest Hoist Ltd.* cases clearly apply to a decision to make a reference u/s 4-k whether the reference is made in the first instance or as a consequence of reconsideration of the matter even though once the Government has refused to make a reference of the same dispute. This single consideration, in our judgment, would have sufficed to reject the contention based on non-compliance with precepts of natural justice.

18. In our opinion, there is also no merit in the contention that once the Government has declined to make a reference of a particular industrial dispute, any civil rights of the management come into existence which are adversely affected as a consequence of a reversal of the decision. In the first place, the rights of employers to enter into contracts of employment with workmen and to determine their conditions of service are not uncontrolled even if there is no industrial dispute pending adjudication. The right of the employer to deal with his workmen and to determine their conditions of service and terms of employment are subject to various limitations which must be incorporated in the Certified Standing Orders under the Central and State enactments dealing with the subject. The Minimum Wages Act, the Payment of Wages Act and similar other enactments considerably control the rights of the employer to deal with their workmen. Even when there is no industrial dispute pending adjudication as a consequence of an order passed u/s 4-k of the Act Section 4-I places restrictions of the right of the employer to effect changes in the conditions of service applicable to his or its workmen in respect of any of the matters specified in the Third Schedule. If the employer disregards the provision of Section 4-I of the Act, he can be subjected to penalties u/s 14 of the Act. It is true that further constraints on the managements rights are placed by Section 6-E of the Act when a reference is made u/s 4-k thereof but they are not the outcome of the order of reference itself but are merely "unfortunate side-effects" thereof. In any case, such constraints follow irrespective of the question as to whether a reference is made soon after the Industrial dispute is raised or later after an initial denial.

19. The contention raised by the learned Counsel for the petitioner that once the Government has refused to make a reference the employer can reasonably expect that there is no possibility of the reference being made later without his being heard and thus can proceed to arrange his affairs accordingly and hence when if without hearing it or him an order is passed u/s 4-K his legitimate

expectation are thwarted is also, meritless. In view of the Supreme Court decision in *Western India Match Co, Ltd..* (supra) and the subsequent judgment of the same Court, the petitioner must have been well aware and should have been conscious of the fact that since the industrial dispute in question had not been resolved in any manner contemplated by the Act the Government was free at any stage to refer it to the Industrial Court or Tribunal u/s 4-k. The petitioner thus had no business to build up any legitimate expectation that a reference will not be made at a later stage. At best the petitioner had hope that since the Government had once refused to make a reference of the dispute it will not do so in future. If employer had no right to be heard in the first instance before a reference is made u/s 4-K of the Act, we see no reason to hold that he acquires such a right merely because the exercise of power had been deferred.

20. Before making a reference u/s 4-k, the Government can act sue moto on the information received from any quarter whatsoever which it considers to be worthy of reliance. The Government can act on information received through officials of the Labour Department or its police or intelligence agencies or even on the basis of facts coming to its knowledge from parties absolutely unconcerned with the dispute. The mere fact that in the instant case the Government chose to do so on the basis of representations received from the union of the workmen aggrieved, in our view makes no difference to the situation,

21. For the reasons given above, in our judgment the petitioner had no right to be heard or to be informed of the circumstances which prompted the Government to make impugned reference.

22. We have in the rather unduly discussion in the preceding paragraphs already dealt with the various considerations that weighed with the learned Judges who decided *K. Abdul Salamani Co. v. State of Tamil Nadu and Ors.* (supra), *Tiruchi Steel Rolling Mills Ltd. v. Gnanasambandan* (supra) *Shanth Theatre (P) Ltd. v. State of Tamil Nadu and Ors.* (supra) *G. Muthukrishna v. The Administrative Manager* (supra) *New Horizon Sugar Mills and American Express International Banking Corporation v. Union of India* (supra) and have set out the reasons for our inability to concur with their views, It is consequently futile to enter into an analysis of those decisions all over again, It appear to us that they proceeded on an inaccurate application of the Supreme Court judgments referred to therein. The observations made in *Abdul Salam's* case which has been approved in practically all the others suggesting that while taking a decision to refer an industrial dispute the Government has the characteristic trappings of a quasi judicial Tribunal even disregards the judgment of the Supreme Court rendered as far back as on 5th December, 1952 in *State of Madras Vs. C.P. Sarathy and Another*, , in which a directly different view was specifically taken.

23. The judgments of Kerala High Court in *Abdul Rahiman Haji v. Abdul Rahiman and Ors.* (supra), and *Kirloskar Electric Company Ltd. v. The Workmen of Kirloskar Electric Company Ltd.* (supra) have, in our opinion, correctly laid down the law and the reasons contained in those decisions are substantially in accord

with those given by us.

24. The next submission made by the learned Counsel for the petitioner was that the Tribunal had erred in law in holding that the Reference was competent since on the facts such dispute as existed between the parties stood finally and completely resolved as a consequence of the settlement arrived at between the parties and the review order of Sri B. B. Lal which had been given effect to. It was submitted that merely because a number of issues were in dispute and relief had only been partially granted, it could not be reasonably urged that the dispute continued to exist since it had been clearly settled between the parties that the order passed by Sri B. B. Lal would be binding on the parties. It was urged that the settlement entered into between the parties to abide by the decision of Sri Lal amounted to a settlement as defined in Section 2(t) of the Act and had been duly registered in accordance with the requirement of Section 6-B thereof. This contention, in our opinion, has no force and must be rejected. An industrial dispute once raised can come to an end only if it has been resolved in one of the manners contemplated by the Act, It can also disintegrate or dissolve if either the aggrieved workmen withdraw their claims which gave rise to the dispute or if one of the parties to the dispute ceases to exist altogether. The latter contingency in the instant case never arose. What has been described as a settlement was, in our view, not a settlement within the meaning of Section 2(t) or Section 6-B of the Act. A settlement within the meaning of Section 6-B of the Act implies an agreement between the disputing parties which resolves issues over which the parties are in conflict. In the instant case what has been described as a settlement was merely in the nature of an agreement voluntarily entered into between the parties to refer their dispute to the arbitration of Sri B. B. Lal. If we are right in our view that there was nothing beyond an arbitration agreement the requirements of Sub-section (3) of Section 5-B were undisputably not complied with. Moreover, such a reference of the dispute to the arbitration of Sri B. B. Lal could have been made only according to Section 5-B (1) before the dispute had been referred u/s 4-K of the Act to a Labour Court or an Industrial Tribunal. The agreement in the instant case to have the dispute resolved through the intervention of Sri B. B. Lal was entered into at a time when a reference u/s 4-K was already pending before the Industrial Tribunal- Under the circumstances, respondent No. 2 has, in our opinion, rightly taken the view that what has been described as a settlement was only morally binding on the workman as well as the petitioner. It was not a settlement u/s 6-B of the Act which had any enforceable character under the provisions of the Act.

25. It was lastly urged that when the State Government passed the order challenged u/s 4-K of the Act, it had no material before it justifying the conclusion that there was an industrial dispute in fact pending. Between the 1st June. 1974 when the State Government rejected the application made by respondent No. 3 for reference of the dispute relating to the dismissal of respondents Nos. 4 to 14 to an Industrial Tribunal and the 6th September, 1977 when the instant order of Reference was made there was no change in the

situation which could have justified the State Government altering its earlier decision. This indicated, according to the learned Counsel for the petitioner, an absolute failure on the part of the State Government to apply its mind to the expediency or otherwise of making a reference. This contention, in our judgment, has no merit. Respondents Nos. 4 to 14 as well as respondent No. 3, the union which espoused their cause remained throughout dissatisfied with the order of dismissal of 11 workmen and consistently continued to agitate their grievance. They filed a writ petition in this Court challenging the order of Sri B. B. Lal refusing to accept the workmen's demand for their reinstatement. When the writ petition was dismissed, respondent No. 3 moved the State Government for a reference of the dispute u/s 4-K of the Act. On the Government's refusal to do so, writ petition No. 6004 of 1974 was filed for a mandamus to the State Government to refer the dispute to a Tribunal. The writ petition was got dismissed as "not pressed" only when an assurance was obtained by the workmen from the Government that the dispute would be referred for adjudication. From the impugned order of the Tribunal on the basis of material before it, it appears that in the subsequent agreements reached between the management and the union in 1974 and 1978 there was a mention of the demand regarding the reinstatement of the aggrieved employees. The order discloses that before the Tribunal the employer's witness Sri H. K. Mohanty, the Company's Industrial Relations Manager, admitted that there was a relay hunger strike by the workmen on the question of reinstatement of the 11 workmen. The workmen's witness Sri Arvind Kumar, who was the General Secretary of the union had also stated that apart from hunger strike, the union had given notice for strike also if the demand of the union in regard to the 11 workmen concerned was not conceded by the management. All these facts, it has been held by the Tribunal, on the basis of evidence before it, were within the knowledge of the Government as the officers of the Labour Department were making efforts for the avoidance of industrial strife. The admission made by the State Government in the counter-affidavit filed in writ petition No. 6004 of 1974 to the effect that the findings given by Sri B. B. Lal were binding on both the parties was evidently made on a misapprehension of the true legal position.

26. In the counter-affidavit filed on behalf of the State Government, it has been stated though that no doubt initially the State Government had refused to refer the dispute for adjudication to the Industrial Tribunal in view of the fact that the same matter was reviewed by Sri B. B. Lal it was later realised that the decision of Sri Lal was not legally enforceable under the provisions of the Act and as such the industrial dispute continued to subsist between the parties. In paragraph 21 of the counter-affidavit filed on behalf of respondent No. 1, it had been stated that the State Government considered the matter again and formed the opinion that the dispute had not been fully and finally settled between the parties and, therefore, the Government decided to make a reference u/s 4-K of the Act suo motu. In these circumstances, we find it impossible to hold either that no industrial dispute did in fact exist at the time when the order of reference was

made or there was failure on the part of the State Government to apply its mind to the relevant facts before passing the order dated 6th September, 1977.

27. Having given our careful considerations to the contentions raised, we dismiss this petition with costs to the opposite parties. Interim orders, if any, passed by this Court are hereby vacated.

28. Before parting with this case, we acknowledge our indebtedness to the learned Counsel who put forward their respective contentions with commendable ability.