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**(2003) 07 GUJ CK 0069**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 5588 of 2003**

Indian Rayon and Industries Ltd.

APPELLANT

Vs

State Of Gujarat

RESPONDENT

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**Date of Decision : 28-07-2003**

**Acts Referred:**

General Clauses Act, 1897 — Section 21

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 17A

**Citation : (2004) 101 FLR 368**

**Hon'ble Judges : H.K. Rathod, J**

**Bench : Single Bench**

**Advocate : Nanavati Associates, for the Appellant; M.S. Rao, AGP for Respondent No. 1-2, for the Respondent**

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## **Judgement**

H.K. Rathod, J.—Heard learned Sr. Advocate Mr. KS Nanavati for the petitioner Co.; Mr. M.S. Rao, learned AGP for the respondent State. Notice issued by this court has been served upon the respondent No.3. The docket suggests the name of Mr. T.R. Mishra, learned advocate for respondent NO. 3 but nobody has appeared on behalf of respondent no.3 when the matter was called out. Hence, the matter has been taken up for hearing and has been considered for final disposal in absence of respondent no.3. In this petition, initially while issuing the notice to the respondents, ad.interim relief in terms of para 13(B) of the petition was granted by this court.

2. According to the petitioner company, all the three unions raised demands by their separate charter of demands against the petitioner company on different dates seeking wage revision and change in service conditions. The demands raised by the three unions were admitted in conciliation proceedings bearing cases no. 145/01, 146/01 and 143/01 on 19.6.2002. Thereafter, as the settlement therein could not be arrived at between the parties, the Assistant Commissioner of Labour, Junagadh submitted the failure report to the government after concluding the matter on 25.7.2002. In view of that, the

Government referred all these demands to the Industrial Tribunal, Rajkot vide reference (IT) NOs. 1,2 and 3 of 2003 which are pending for adjudication before the said Tribunal. According to the petitioner, in view of the globalized industrial scenario and in view of the fact that it has become difficult to survive without rationalization, productivity, quality etc., it was absolutely eminent for the petitioner to have certain conditions of service changed and, therefore, the petitioner company raised charter of demands for change in conditions of service on 29.1.2002 and 5.6.2002 which were also admitted in conciliation and were numbered as case no. 56 of 2002 and ultimately, the Assistant Commissioner of Labour concluded the hearing on 25.7.2002 and submitted the failure report to the Government vide letter dated 31.7.2002 and ultimately, in view of the representation made by the petitioner company requesting the commissioner to refer all the demands raised by it under the charter of demands dated 29.1.2002 and 6.5.2002, and also in view of the factual and legal position, the said authority ultimately referred the demands raised by the petitioner company for adjudication to the industrial tribunal, Rajkot vide Reference (IT) No. 6 of 2003 on 10.2.2003 and thereafter, on 25.3.2003 and 7.4.2003, the petitioner company filed its statement of claim and application for interim relief which reference and application are now pending for hearing. Thereafter, the Commissioner of Labour illegally and without jurisdiction, cancelled the order of reference dated 10th February, 2003 by order dated 22/23.4.2003. According to the petitioner company, said order is illegal and beyond the powers vested in the Commissioner. According to the petitioner, said order is passed by the Commissioner without hearing the petitioner before making the said order and, therefore, the petitioner has approached this Court by way of this petition.

3. Looking to the order passed by the Commissioner of Labour dated 22/23.4.2003, addressed to the Secretary, Industrial Tribunal No.2, Rajkot, it appears that the earlier order of reference dated 10.2.2003 referred to for adjudication in exercise of the powers u/s 10 of the Industrial Disputes Act, 1947 has been cancelled. In view of that, during the course of hearing of this petition, learned Sr. Advocate Mr.K.S.Nanavati appearing for the petitioner has raised the following important two contentions for this Court's consideration:

(1) Whether the Commissioner of Labour has, while exercising the powers u/s 10 of the Industrial Disputes Act, 1947, authority or power to cancel the reference already made under the provisions of the Industrial Disputes Act, 1947 or not?

(2) Whether it is necessary for the Commissioner of Labour to give any reasonable opportunity of hearing before cancelling the order of reference made earlier ?

4. It was submitted by the learned Sr. Advocate Mr. Nanavati that once the reference has been made in exercise of the powers u/s 10(1) of the ID Act, 1947, then, the Labour Commissioner becomes functus officio and he cannot cancel the reference, that is the Scheme of the Industrial Disputes Act, 1947. He has relied upon the decision of the Hon'ble Apex Court in the matter of The

State of Bihar Vs. D.N. Ganguly and Others, . He has relied upon the observations made by the Hon"ble Supreme Court to the effect that once the order in writing is made by the appropriate Government referring the industrial dispute to the tribunal for adjudication u/s 10(1) of the I.D. Act, 1947, the adjudication proceedings are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable u/s 17A of the Act, 1947. He also submitted that as per the decision of the Hon"ble Apex Court, this is the effect of section 20(3) of the Act. The apex court has further held that it is well settled that Section 21 of the General Clauses Act embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject matter, context, and the effect of the relevant provisions of the said statutes. It has also been held that if the context and effect of the relevant provisions are repugnant to the application of the said rule of construction, assistance of Section 21 of the General Clauses Act could not be invoked. In view of the aforesaid provisions and the decision of the Apex Court referred to above, it was submitted by the learned Sr. Advocate Mr. K.S. Nanavati for the petitioner that the act of cancellation of the order of reference already made u/s 10(1) of the ID Act, 1947 is without jurisdiction and beyond the power and authority of the respondent NO.2, Commissioner of Labour and, therefore, same is required to be quashed and set aside.

5. It was also his submission that once the order of reference has been made by the authority in the dispute raised by the petitioner, then, such orders cannot be cancelled without hearing the petitioner company as it is having adverse civil consequences in respect of the demands raised by the petitioner company. He relied upon the recent decision of the Hon"ble Apex Court CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in 2003 (5) SCC 557 : 2003 SCC [L& S] 507 and has relied upon certain important observations made therein.

6. As against that, it was submitted by the learned AGP Mr. M.S. Rao on behalf of the respondent authority that the authority who has power to refer the matter for adjudication has also power to cancel such order of reference. According to him, the Commissioner of Labour was right in cancelling the order of reference dated 10.2.2003 as he felt that there was some mistake in making the reference. As per the instructions from the respondent no.2, it was submitted by him that the President of the Bharatiya Mazdoor Sangh has made representation to the respondent No.2 vide his letter dated 21.4.2003 to cancel the order of reference dated 10.2.2003 on the ground that it is likely to create industrial unrest and some of the demands are pertaining to statutory liability of the employer and some of them are against the interest of the workers and, therefore, according to him, considering such representation made by the President of said Sangh, respondent no.2 reconsidered the matter and decided not to make the reference of the demand as they are against the interest of the workers and, therefore, it has cancelled the order of reference made earlier on 10.2.2003 by way of communication dated 22/23.4.2003 and in doing so, no error has been

committed by the respondent no.2. He has relied upon the decision of the Hon''ble Apex Court in case of The Secretary, Indian Tea Association versus Ajay Kumar Barat and others reported in 2000 LLR 506. He also relied upon the another decision of this court in LPA No. 8521 of 2000 dated 6th December, 2001 (Coram : J.M. Panchal and P.B.Majmudar,JJ.) and has submitted that the authority making reference has power to reject the request for making reference. On the basis of the aforesaid decisions, it was submitted by him that the order cancelling the earlier reference passed by the Commissioner of Labour is quite legal, valid, just and proper order. In support of his decision, he has also relied upon the decision of the apex court in the matter of Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, and other two decisions including the decision of this court and has submitted that the petition would require no consideration and the same is required to be quashed and set aside.

7. I have considered the submissions made by the learned advocates for the parties present before this Court. It is necessary to consider section 10(1) of the Industrial Disputes Act, 1947. Section 10(1) of the Act provides that when the appropriate Government is having the apprehension of industrial dispute or if the appropriate Government is of the opinion that the industrial dispute is existing, then, the appropriate Government can make reference of dispute for adjudication to the labour court or the industrial tribunal as the case may be. There is no ban or bar under the Industrial Disputes Act, 1947 that the employer petitioner company herein cannot raise the dispute before the respondent no.2. Equally the workers as well as the employer both are entitled to raise industrial dispute and, therefore, petitioner company as well as the workers or any one of them can raise the industrial dispute and therefore, dispute raised by the petitioner company as well as the dispute raised by the workers both were referred to for adjudication before the industrial tribunal concerned. The references made by the appropriate Government at the instance of the workmen as well as the company were pending for adjudication before the industrial tribunal and during the pendency of adjudication thereof, the order of reference dated 10th February, 2003 made at the instance of the petitioner company by the appropriate Government has been cancelled by the Commissioner of Labour by order dated 21/22.4.2003 and in view of that, now the question is as to whether the appropriate Government, after referring the industrial dispute for adjudication to the tribunal or the labour court as the case may be, have power or jurisdiction to subsequently cancel such order of reference or not. That aspect has been examined by the Hon''ble Apex Court in the matter of The State of Bihar Vs. D.N. Ganguly and Others, . In the said decision, while considering the effect of section 21 of the General Clauses Act, it has been observed by the apex court as under:

" Apart from these provisions of the Act, on general principles, it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made under S. 10(1). If on the representation made by the employer or his workmen the appropriate

Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then make the reference under S. 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question, it is important to bear in mind that that power to cancel its order made under S. 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reason for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government it would be open to the appropriate Government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate Government under S. 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of S. 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by S> 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of S. 10(1) of the Industrial Disputes Act;"

"Apart from the various provisions of the Act, on general principles it seems difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made u/s 10(1). If on the representation made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference under S. 10(1) there appears to be no reasons or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. "

8. Thereafter, it has been further observed by the Hon"ble apex court in the said matter as under on page 644:

" Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate Government under S. 10(1) can be subsequently cancelled or superseded by it.

We must therefore confirm the finding made by the learned Judges of the High Court at Patna, that the notification issued by the appellant cancelling the first two notifications is invalid and ultra vires."

9. In view of the above observations made by the apex court wherein the apex court has considered that the appropriate government is not having even implied powers to cancel earlier order of reference, naturally, meaning thereby, there is no express provision made in the Act which give such power to the appropriate Government to cancel its earlier order of reference. Therefore, considering this

aspect, apparently, the order of the respondent no.2 cancelling earlier order of reference dated 10.2.2003 is contrary to the provisions of the Industrial Disputes Act, 1947 and is, therefore, without jurisdiction. However, it is a settled law that the appropriate Government can vary and amend the terms of reference.

10. As regards the contention raised by the learned AGP Mr. M.S. Rao on behalf of the State, that the Government can reject the reference, that is the initial stage and not the subsequent stage. Section 12(5) of the ID Act, 1947 is relating to initial stage where the dispute has come for decision of respondent no.2. Once when at the initial stage, powers have been exercised u/s 10(1) of the ID Act by making an order of reference then, the respondent no.2 is having no power or authority express or implied to cancel such an order of reference made at the instance of the petitioner company and, therefore, contention raised in that regard by the learned AGP Mr. Rao on behalf of the respondents no.1 and 2 cannot be accepted. The next contention is that the order of reference has been cancelled by the respondent no.2 pursuant to the representation made by the Bharatiya Mazdoor Sangh dated 21.4.2003, the respondent no.2 has cancelled the said order of reference. It is not in dispute that while considering the representation made by the and before passing the order in question, respondent no.2 has not given any opportunity to the petitioner company to have its say in the matter of representation made by the Bharatiya Mazdoor Sangh by its letter dated 21.4.2003. If the respondent No.2 wants to pass any order upon the representation made by the said Sangh, then, it is incumbent upon the respondent no.2 to see that the petitioner company is also made aware of such representation. However, from the facts of the present case, it appears that the respondent no.2 has unilaterally passed the order in question while acting upon the representation dated 21.4.2003 made by the Bharatiya Mazdoor Sangh and has passed the order cancelling earlier order of reference without hearing the petitioner and without affording any opportunity of hearing to the petitioner. Therefore, the order in question is also in violation of the principles of natural justice and on that ground also, the order in question is required to be quashed and set aside. The view taken by the Hon"ble Apex Court on the issue of principle of natural justice in case of CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in 2003 SCC [L& S] 507 is very much relevant and material in the facts of the present case. The important observations made by the Apex Court in aforesaid decision says as under :

"Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by

the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

It is further observed that;

"Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinately of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time."

11. Therefore, even on that count also, the order in question is illegal and bad in law. It is also bad in law, illegal and without jurisdiction for want of implied or express jurisdiction to cancel the order of reference made earlier u/s 10(1) of the ID Act, 1947. Therefore, on all counts, the order in question is liable to be quashed and set aside and the submissions made by the learned AGP Mr. Rao that the authority who is having power to make reference is also having power to cancel the same cannot be accepted and the appropriate Government can reject the reference is not applicable to the facts of the present case and the same is, therefore, rejected.

12. For the reasons recorded hereinabove, this petition is allowed. The order dated 22/23.4.2003 (Page 11 to this petition) cancelling the earlier order of reference dated 10th February, 2003 is hereby quashed and set aside and consequently the said order dated 10th February, 2003 is hereby restored and it is directed to the Industrial Tribunal, Rajkot to take up the Reference (IT) NO. 6 of 2003 on its file. Accordingly, it is directed to the Industrial Tribunal, Rajkot to proceed further with the Reference (IT) No. 6 of 2003 from the stage where it was pending in accordance with law. With these observations and directions, this petition is finally disposed of. There shall be no order as to costs.