

(1978) 04 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 11018 of 1977

Indian Telephone Industries Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-04-1978

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 324, 329
Industrial Disputes Act, 1947 — Section 10, 10 (1), 10 (1) (c)

Citation : (1978) ILR (Kar) 1282 : (1978) 2 KarLJ 294 : (1978) 1 LLJ 544

Hon'ble Judges : K.S. Puttaswamy, J;K. Bhimayya, J

Bench : Division Bench

Judgement

Per Puttaswamy, J.—On a reference made by Rama Jois, J., this writ petition is posted before us for disposal.

2. In the order of reference, the facts of the case, one of the principle points that arises for determination and the reasons for making the reference are succinctly set out and, therefore, a detailed narration of the facts is not really necessary. But in order to make our order self-contained, we first propose to notice the facts as emerging from the pleadings and file Nos. SWL 99 LLD 77, SWL 111 LLD 76 of the Karnataka Government Secretariat and File No. IDA-5/CR-178/75-76 of the Office of the Labour Commissioner made available by the learned Advocate General at our request and then deal with the contentions that arise for determination.

3. M/s. Indian Telephone Industries Ltd., Bangalore, is a wholly owned Central Government Company engaged in the business of manufacture and supply of telephones in our country and has on its rolls about 16,000 employees. As a background the petitioner has referred in detail to the dismissal of one Sri V. V. Thyagaraja Iyer of the Cross-bar Division on 29-9-1973 for proved misconduct and various other details that are not really necessary for determining the issues that arise before us and, therefore, it is not necessary to notice them in detail.

4. On 6-12-1973, there was an unfortunate incident of stabbing one Shri Ajit

Dutt, Works Manager of the Cross-bar Division of the factory when he was proceeding from his house in the I.T.I. Colony to the adjacent factory which in turn, let to industrial unrest and law and order problem in and around the factory. In the wake of that incident, respondent Nos. 2 to 14 and certain others with whom we are not concerned, were challenged for various criminal offences before the criminal Courts. While the criminal proceedings were pending on 18-12-1973, the petitioner, exercising the powers conferred on it by Standing Order No. 17(1) of the Certified Standing Orders of the factory, terminated the services of respondent Nos. 2 to 14 and their Labour Union-respondent No. 15, moved the Government and other authorities functioning under the Industrial Disputes Act of 1947 (hereinafter referred to as "the Act") to intervene on their behalf and make a reference under S. 10(1)(c) of the Act to the appropriate Labour Court to adjudicate the validity of termination of respondent Nos. 2 to 14. In accordance with the usual practice in such matters, the claim of respondent Nos. 2 to 15 came up before the Assistant Labour Commissioner and conciliation officer, Bangalore Division II, Bangalore in the first instance, for conciliation who, true to his duties, tried his best to mediate and promote a settlement of the dispute between the parties. After hearing the parties on 20-4-1974, 3-6-1974, 15-6-1974, 20-7-1974, 4-9-1974, 7-10-1974, 19-10-1974, 15-11-1974, 2-12-1974, 20-12-1974, 15-1-1975, 18-3-1975, 31-3-1975, 28-4-1975, 28-10-1975, 28-11-1975 and on 6-12-1975, and considering the written representations filed by them, the conciliation officer by his report dated 20-1-1976 opined that the dispute deserved a reference under S. 10(1)(c) of the Act to the Labour Court. But the Labour Commissioner in his report dated 23-2-1976 addressed to the Govt. on a critical examination of the report of the conciliation officer, disagreed with his views and recommended to the Government that the dispute did not merit a reference to adjudication. At this stage, it is relevant to notice that by the time Government had to examine the matter, respondent Nos. 2, 5 to 14 had been discharged by this Court, though an appeal filed by the State against that order of discharge was pending before the Hon'ble Supreme Court. On an examination of the recommendations of the Labour Commissioner, conciliation officer, further written representations filed by the management and labour union and after affording an opportunity of oral hearing to both the parties having regard to the relevant consideration like (1) whether the action of the petitioner was prima facie legal, (2) whether an industrial dispute did exist or was apprehended and (3) whether it was expedient to make a reference or not, Government decided that it was not a fit case to make a reference under S. 10(1)(c) of the Act to the Labour Court. In examining the question as to whether a reference should be made or not, Government among others, has found that the decision of this Court in criminal proceedings filed by respondent Nos. 2, 5 to 14 and the pendency of the appeal by the State before the Supreme Court had no bearing and the action of the petitioner-management had to be examined dehors those proceedings. In pursuance of the decision taken by the Government on 27-5-1976, an endorsement bearing No. SWL 111 LLD 76 dated 28th May, 1976 Exhibit-U, was issued which reads thus :

"ENDORSEMENT

Sub :- Industrial Dispute between the workmen and the management of I.T.I. Ltd., Bangalore - Termination of 13 workmen under standing orders of the management -

I am directed to state that Government consider that the dispute under reference does not merit reference to the Labour Court for adjudication for the reason that the action taken by the management under the standing orders of the company in terminating the services of 13 workers is in order.

Yours faithfully,

Sd./- K. Mylarappa, Under Secretary to Govt. Social Welfare & Labour Dept."

Even though the said decision of the Government was against them, respondent Nos. 2 to 15 did not take any other legal proceeding available to them and allowed the matters to rest till 9-1-1977.

5. On 10-1-1977, respondent No. 15 presented or addressed a memorandum to the Chief Minister, Government of Karnataka requesting him to intervene in the matter and prevail on the other petitioner to reinstate respondent Nos. 2 to 14 or refer the matter adjudication under the Act having regard to the favourable views expressed by the conciliation officer. In the said representation what has been prominently urged by the respondent No. 15 is that in the case of another industry called "Mico" at the intervention of the Government at the ministerial level, the said company had reinstated its employees and the claim of respondent Nos. 2 to 14 was similar to those employees. On the said representation, the Chief Minister minuted as under :

"Labour Commissioner :

This question has got to be taken up with the management. But if the management does not yield, then the cases will have to be referred to adjudication. Keep me informed of the action taken.

Sd./- D. Devaraj Urs, Chief Minister, 10-1-1977"

Apparently on receipt of the said representation, the Labour Commissioner explored the possibility of reinstating respondent Nos. 2 to 14 by discussing the matter with the General Manager of the petitioner-company on 21-2-1977. In their discussion, the General Manager does not appear to have agreed to reinstate respondent Nos. 2 to 14 and appears to have stuck to the original stand that had been taken by the management in the earlier proceedings. On 23-2-1977 the Labour Commissioner made a report to Government appraising of the steps taken by him to implement the decision of the Chief Minister and to take action in accordance with the decision of the Chief Minister. In that report, we do not find any new circumstances brought to the notice of the Government by the Labour Commissioner except the efforts made by him to implement the directions of the Chief Minister and his failure in that behalf. On an examination

of that report, the Deputy Secretary to Government, Labour Department, pointed out there was no change in the circumstances of the case. On an examination of the papers in File No. SWL 99 LLD 77 apart from various notes and orders that has no bearing, it appears the Chief Minister in the discussion he had with the Secretary to Government, Labour Department, stuck to his earlier stand and directed him to refer the dispute for adjudications. On 6-4-77 the Secretary made a note as under :

"I discussed with Chief Minister a few days ago and he asked me to refer the dispute for adjudication.

For perusal before issue of orders.

Sd./- XXXX 6-4-77".

On 13-7-1977 the Chief Secretary to whom the file was marked before the matter was ordered to be placed before the Minister for Labour opined as under :

"The Managing Director, Shri I. K. Gupta feels that this is likely to affect the discipline adversely, and that production would suffer. He may be heard and then a decision taken.

Sd./- G. V. K. Rao, Chief Secretary, 13-4-77".

On 23-7-1977, the Minister for Labour minuted as under :

"C.M. may decide.

Sd./- C. N. Patil. Minister for Labour, 23-7-77".

Finally on 28-7-1977 the Chief Minister minuted as under :

"The matter be referred to adjudication.

Sd./- D. Devaraj Urs, Chief Minister, 28-7-1977".

In pursuance of the minute of the Chief Minister, an order bearing No. SWL 99 LLD 77 dated 2nd and 4th August, 1977 was issued by the Government (Exhibit W) the validity of which is challenged by the petitioner before us. That order reads thus :

"GOVERNMENT OF KARNATAKA

Karnataka Government Secretariat, Vidhana Soudha, Bangalore, dated

No. SWL 99 LLD 77 2nd August, 1977" ----- 4th

ORDER

Whereas the Government of Karnataka are of the opinion that an Industrial Dispute exists between the workmen and the management of Indian Telephone Industries Ltd., Doorvaninagar, Bangalore - 560 001 on the points noted below :

"And whereas the Government of Karnataka consider it desirable to refer the

dispute for adjudication. Now, therefore, in exercise of the powers conferred by clause (c) of sub-s. (1) of S. 10 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) the Government of Karnataka hereby refer the said dispute for adjudication to the Labour Court at Bangalore.

POINTS OF DISPUTE

"I. Are the management of Indian Telephone Industries Ltd., Doorvaninagar Bangalore - 16, justified in terminating the service of the following 13 workmen with effect from 19-12-1973 ? :

NAME Sriyuths St. No. Dept. 1. R. Muddanna 16632 Training Centre 2. N. K. Gopala Iyengar 14679 Crossbar Cables 3. M. Venkataswamy 14878 do 4. A. Ramakrishna Reddy 16386 Training Centre 5. L. Muniswamy 2184(R) Jobbing 121 6. M. Jayaraj 1984(R) General Canteen 7. R. Puttaraju 17403 do 8. M. Pyarejan 17769 "X" M/c Shop (f8) 9. M. Eswar Rao 16678 Crossbar Assembly 10. X. A. Mahohar 9719 Inspection 184 (f8) 11. M. V. Subbaramu 6908 Misc. M/s. shop (f3) 12. P. Gopalaswamy 18374 Training Centre 13. S. Narendrakumar 18662 do II. If not, to what relief are the said workmen entitled to".

By Order and in the name of the Governor of Karnataka,

Sd./- M. Mylarappa, Under Secretary to Government, S. W. and Labour Dept.

6. For examining the principal legal contention of the petitioner that the order is violative of the principle of audi alteram partem, it is useful to notice a few more facts and record a finding thereon.

7. Among others, the petitioner has pleaded that the Government before deciding to refer the dispute to the Labour Court had not afforded an opportunity of hearing understood as filing or written representations or an oral hearing and has decided the matter only on a consideration of the written and oral representations of respondent Nos. 2 to 15 and not of the petitioner. In its return, respondent No. 1 does not dispute this factual assertion of the petitioner. In their return, respondent Nos. 2 to 14 have averred that respondent No. 15 accompanied by respondent Nos. 2 to 14 met the Chief Minister and explained to him the decision of the Supreme Court in Criminal Appeal No. 345/346, Supreme Court, page 1489, and the report of the conciliation officer which was in favour of making a reference to the Labour Court which is not denied either by the Chief Minister or by any other officer and we have no reason to disbelieve this assertion of respondent Nos. 2 to 14. In File No. SWL 99 LLD 77, the Secretary to the Government, Labour Department, in his note dated 14-3-1977 has noted that one Shri Ramadasappa met him and explained to him that there was an understanding between the management under which Standing Order No. 7(1) should be applied. In his note dated 17-1-1977 the Chief Secretary records that the Managing Director, Shri I. K. Gupta feels that a reference is likely to affect the discipline adversely and that production would suffer. Anyone reading this note would get the impression that the Chief Secretary would have discussed the

matter with the Managing Director. But as to what exactly that took place between the Chief Secretary and the Managing Director we do not have the benefit of an affidavit or any verified statement filed by any of them explaining what really transpired between them. One can only guess that the Chief Secretary before recording his note might have contacted the Managing Director informally. But his later note clearly suggests that the Government should take a decision in the matter only after hearing the Managing Director.

8. In its return, on the basis of which the case was argued before Rama Jois, J., respondent No. 1 did not deny the factual averments made by the petitioner on the denial of opportunity of hearing before making the impugned order of reference. But on 2-3-1978 respondent No. 1 filed an additional statement of objections without the leave of the Court verified by one Shri Manoharan, Under Secretary to the Government in the Labour Department stating that on the representations filed by respondent No. 15, the Labour Commissioner called for the General Manager of the petitioner, discussed with him and then made a report to Government. Shri Soli Sorabji, learned counsel for the petitioner, took strong objection to the manner in which respondent No. 1 has filed its additional statement of objections. In answer to the additional statement of objections, the petitioner, on 6-3-1978 has filed a reply verified by one Shri Thomas Kora, General Manager of the petitioner-company. In the reply it is averred that the General Manager had met the Labour Commissioner on 21-2-1977 in connection with Labour situation prevailing after the lifting of the lock-out earlier declared. On that occasion, the Labour Commissioner enquired about the possibility of reinstating the services of respondent Nos. 2 to 14 to which he answered in the negative and stated the reasons for the same. In the reply it is specifically averred that the General Manager at no time was informed or apprised of the fact that a representation was made by the workmen nor the contents thereof were disclosed to him nor was a copy of the same was furnished. In his note dated 21-2-1977 or in his report dated 23-2-1977 to Government, the Labour Commissioner has not recorded as to what all transpired between him and the General Manager. Shri Manoharan who has filed the verification affidavit in support of the additional statement of objection does not claim to be present at the time of the discussion between the Labour Commissioner and the General Manager and his source of information is only the records which do not establish the assertion made by respondent No. 1 in its additional statement of objections. In the absence of an affidavit by the Labour Commissioner explaining as to what happened on 21-2-1977 between him and the General Manager of the petitioner-company, we have no reason to disbelieve as to what has been stated by the petitioner in its reply to the additional statement of objections filed by respondent No. 1. In the above state of pleadings and records, we have no alternative but to hold that the Government before deciding to refer the dispute had not provided an opportunity of hearing to the petitioner by hearing we mean by filing written representations or an opportunity of oral hearing and the decision of the Government was based solely on affording an opportunity of

hearing to respondent Nos. 2 to 15.

9. Shri Soli Sorabji urged that the order impugned in the writ petition which was "Civil consequences" on the petitioner without affording an opportunity of hearing either by filing written representations, consideration of those written representations or an opportunity of oral hearing before actually deciding to refer the dispute was in violation of the principle of audi alteram partem and was, therefore, liable to be struck down. In support of his contention, he strongly relied on the recent ruling of our Supreme Court in *Mohinder Singh Gill v. The Chief Election Commissioner and others* (Civil Appeal No. 1297/77 decided on 2-12-1977; *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, of the Madras High Court in *K. Abdul Salam and Company v. State of Tamil Nadu and others* (Vol. 43 (1973) *Indian Factories Journal*, 1890) and a Division Bench ruling of the same Court in *Tiruchi Steel Rolling Mills Ltd. v. S. Gnanasambandan and others* (Vol. 46 (1974) *Indian Factories Journal*, 158). Shri R. N. Byra Reddy, learned Advocate-General appearing for respondent No. 1 Shri H. B. Datar, learned counsel for respondent Nos. 2 to 14, and Shri N. Santosh Hegde, learned counsel for respondent No. 15, strenuously contended that the principle of audi alteram partem, one of the two important principles of natural justice had no application to a decision under S. 10(1)(c) of the Act and, therefore, the impugned order was legal and valid.

10. Before we examine the contention of Shri Soli Sorabji of the principles decided in *Mohinder Singh Gill*'s case and its application to the facts of the case, it is necessary to notice and deal with a few contentions urged by the learned counsel for the respondents against their application.

11. Shri R. N. Byra Reddy, learned Advocate-General for respondent No. 1 contended that whatever has been stated or decided in *Mohinder Singh Gill*'s case by the Supreme Court on the principles of audi alteram partem was only obiter and had no binding effect. In support of his submission, Shri R. N. Byra Reddy strongly relied on the following passage :

"An obiter binds none, not even the author, and obliteration of findings rendered in Supererogation must allay the appellant's apprehensions".

12. While dismissing the writ petition of *Mohinder Singh Gill* challenging the cancellation of election to Ferozbad Constituency as barred under Art. 329 of the Constitution, the High Court of Delhi appears to have examined the validity of the action of the Election Commission and had expressed itself on the principles that should govern such cases. In that context, the Supreme Court made the above observations and pointed out that the High Court should not have proceeded to enunciate the principles that should govern such cases. In that very para, the Supreme Court has pointed out that such a role could be more appropriately performed by it having regard to the pre-eminent position is occupied under our Constitution and the requirements of Art. 141 of the Constitution. Notwithstanding the bar of Art. 329 of the Constitution, the

Supreme Court speaking through V. R. Krishna Iyer, J., with whom M. H. Beg, C.J., and P. N. Bhagavathi, J., agreed constituting the majority of the Constitution Bench, examined in depth the scope and ambit of "civil consequences" and the application of the principle of audi alteram partem to administrative proceedings and has declared the law which is binding onus. It is settled law that considered obiter dicta of the Supreme Court is binding on all the subordinate Courts in the country. In our view what has been enunciated by the Supreme Court in Mohinder Singh Gill's case is not mere obiter. Assuming that what has been decided therein is only obiter, we are of the view that it is considered obiter dicta and, therefore, the same is binding on us. We, therefore, reject the first contention urged by Shri R. N. Byra Reddy for not following the principles enunciated in Mohinder Singh Gill's case.

13. Learned counsel for the respondents next contended that the principles enunciated by the Supreme Court in examining the validity of an order made by Election Commission made under Art. 324 of the Constitution should be continued only to cases arising under Art. 324 of the Constitution and cannot have universal application to cases arising under other statutes like the Industrial Disputes Act. Undoubtedly in Mohinder Singh Gill's case, the Supreme Court was considering the validity of a Notification issued under Art. 324 of the Constitution. But to say that the principles enunciated or the ratio decidendi or rule of law laid down by the Supreme Court on the meaning of the term "Civil consequences" and the extent and scope of audi alteram partem is not applicable to other cases cannot be accepted having regard to the true nature of the law of precedents recognised in English jurisprudence and applied in our country. We have, therefore, no hesitation in rejecting this contention of the learned counsels for the respondents.

14. Learned counsels for the respondents strenuously contended that the Supreme Court in State of Madras Vs. C.P. Sarathy and Another, , our High Court in Vasudeva Rao (B.K.) Vs. State of Mysore and Others, and in Writ Appeal No. 164 of 1974 directed against the order of Venkataramaiah, J., in Writ Petition No. 3814 of 1973 reported in Kirloskar Electric Company Limited Vs. Workmen of Kirloskar Electric Company Limited, has either expressly or impliedly held that one of the two principles of natural justice, viz., audi alteram partem had no application to a proceeding before the appropriate Government under S. 10 of the Act and, therefore, it is not permissible for us to apply the principles enunciated in Mohinder Singh Gill's case and in any event sitting as a Division Bench of this Court we cannot take a view contrary to the one already expressed by other Division Bench of this Court.

15. We have carefully read the judgment of the Supreme Court in Sarathy's case. In that case, the Supreme Court has had no occasion to examine the applicability of the principle of audi alteram partem and, therefore, that case cannot be held as an authority for holding the contention of the learned counsels for the respondents that the principle of audi alteram partem has no application

to a proceeding under S. 10 of the Act. In no other case that has been brought to our notice, the Supreme Court has considered the applicability of the principle of audi alteram partem to a proceeding under S. 10 of the Act and has held to the contrary. We, therefore, hold that there is no merit in the contention of the learned counsels for the respondents that the Supreme Court had ruled that the principle of audi alteram partem has no application to a proceeding under S. 10 of the Act.

16. Learned counsels for the respondents contended that the principle enunciated by a Division Bench of this Court in Vasudeva Rao's case, had been approved by our Supreme Court in Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, , which according to them has held that the principles of natural justice has no application to a decision reached by the Government under S. 10 of the Act and, therefore, it is not open for us to apply the rule or the ratio decidendi in Mohinder Singh Gills case. In support of his contention, Sri H. B. Datar, learned counsel for respondent Nos. 2 to 14 strongly relied on the following passage in Vasudeva Rao's case;

"It is hardly open to doubt that, as the power under S. 10(1) has been conferred upon Government in the interests of industrial peace, the amplitude of the power cannot be curtailed by the importation of other principles unless there is any warrant for them in the statute itself."

In Vasudeva Rao's case, this Court was examining the power of the Government to make a reference under S. 10 of the Act having once refused to make a reference under that provision. In Wimco's case also our Supreme Court while considering a similar question has noticed Vasudeva Rao's case and has expressed its approval to the principle decided in Vasudeva Rao's case and also several other cases of other High Courts. In Vasudeva Rao's case, whether the principles of audi alteram partem is applicable to a situation as has arisen before us, evidently having regard to the law as it stood then was not even suggested that, therefore, was never considered and dealt by this Court. In our view the sentence in Vasudeva Rao's case, viz., "that the amplitude of the power cannot be curtailed by importation of other principles unless there is any warrant for them in the statute itself" cannot be read as this Court having examined and expressed itself that the principles of audi alteram partem is inapplicable in all situations. We must also remember that Vasudeva Rao's case decided prior to Kraipak's case, which itself made a significant departure in the application of principles of natural justice before administrative authorities, which to our mind has been further explained or extended in Mohinder Singh Gill's case by our Supreme Court. In our view, it will be wrong to hold that Vasudeva Rao's case should be considered as an authority to exclude the principle of audi alteram partem.

17. Learned counsels for the respondents finally contended that the principles enunciated by Venkatramiah, J., in Kirloskar Electric Company Limited Vs. Workmen of Kirloskar Electric Company Limited, viz., that the principle of audi

alteram partem has no application to a decision reached by the Government under S. 19(1) of the Act has been affirmed in Writ Appeal No. 164 of 1974, decided on 29th July, 1975, by a Division Bench of this Court and, therefore, it was not permissible for us sitting as a Division Bench to take a contrary view that if we still doubted the correctness of the principles enunciated in Kirloskar Electric Company's case either by the learned single Judge or by the Division Bench, the only course that is open to us is to make a reference to a Full Bench of our High Court.

18. In Kirloskar Electric Company's case, it is true Venkataramiah, J., after referring to the contention urged by the management in that case and the decision of our Supreme Court in Kraipak's case has expressly held that the principles enunciated in Kraipak's case are inapplicable to a proceeding under S. 10(1) even when it decides to make a reference. As to how far the views expressed by Venkataramiah, J., on the "civil consequences" and the application of the audi alteram partem to a case before us, are correct will be dealt by us at a later stage. But at this stage, it is enough to State that we find it difficult to agree with the views expressed by Venkataramiah, J., on both questions.

19. In Writ Appeal No. 164 of 1974 the Division Bench of this Court while affirming the decision of Venkataramiah, J., in our considered view, has decided the case primarily on the facts of the case without considering it necessary to examine the principles enunciated by Venkataramiah, J. We are of the view, the Division Bench on the very peculiar facts of that case, viz., that first the order of the Government refusing to make a reference had been quashed by this Court, and the Government had been directed to reconsider the matter by a mandamus on the basis of which the reference made by Government thereon was constructed as if the reference was made by the Government for the first time, has affirmed the decision of Venkataramiah, J. In affirming the decision of Venkataramiah, J., we are of the view, the Division Bench has not laid down that the principle of audi alteram partem has no application to a case where the Government once refused to make a reference and then makes a reference after affording an opportunity to only one of the parties and not to both the parties as has happened in the case before us. In our view, the decision of the Division Bench in appeal cannot be read as suggested by the learned counsels for the respondents and, therefore, we hold that there is no justification to refer the questions that arises for our determination to a Full Bench of our High Court.

20. Shri Soli Sorabji, learned Solicitor General, does not dispute either the power of Government to make a reference on a reconsideration of the matter notwithstanding its earlier refusal to make a reference or the nature of the power exercised by Government in making a reference, viz., that the power exercised is administrative and is not judicial or quasi-judicial which principles are firmly established in Wimco's case and C. P. Sarathy's case. But he strenuously contended that the impugned order has "civil consequences" on the petitioner and, therefore, his client was entitled to an opportunity of hearing before the

Government decided to make a reference to the Labour Court. Learned counsels for the respondents with equal vehemence contended that an order of reference under S. 10(1)(c) of the Act has no "civil consequences" and, therefore, the petitioner was not entitled to an opportunity of hearing.

21. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, the Supreme Court in examining the action of the Government to modify an earlier accepted date of birth of a civil servant and ordering her retirement without notice, held that such an action would have "civil consequences" and, therefore, the civil servant was entitled to an opportunity of hearing. In *Bhinapani Dei's* case, the Supreme Court did not define the meaning of the term "civil consequences". But in *Mohinder Singh Gill's* case, the Supreme Court, on a review of all the authorities, has examined the meaning of the term "civil consequences" and has held thus :

"But what is a civil consequences let us ask ourselves by passing verbal booby traps ? Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivations and non-pecuniary damages. In its comprehensive connotations, everything that affects a citizen in his civil life inflicts a civil consequence".

Proceeding further, the Supreme Court has noticed with approval the definition contained in *Black Law Dictionary* (4th Edition) which reads thus :

""Civil" is defined by *Black (Law Dictionary, 4th Edn.)* at page 311 :

Ordinarily, pertaining or appropriate to a number of civets of free political community, or of the and Government of the citizens and subjects of a state. The word is derived from the Latin civil is, a citizen in law, it has various significations".

xx xx xx

"Civil Rights" are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property marriage protection by the laws, (freedom of contract) trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a State or community. Right capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution, and by various acts of congress made in pursuance thereof".

In another para, the Supreme Court observed at page 883 as follows :

"Interest and rights are generous conceptions in this jurisdiction, not narrow orthodoxies as in traditional systems".

22. From the enunciation made by the Supreme Court in *Mohinder Singh Gill's* case, the term "civil consequences" has a very comprehensive meaning and there is no warrant to place a restricted meaning on that term at all. In the light

of the above enunciation, we have now to ascertain whether the impugned order has "civil consequences" on the petitioner.

23. On the refusal of the Government to make a reference, the petitioner was entitled to legitimately expect that the dispute raised by respondent Nos. 2 to 15 and terminated and make its own arrangements to fill up the vacant posts which according to the petitioner, has also been done on the various dates mentioned in the affidavit dated 6-2-1978 of Shri V. R. Alva, Personnel Manager of the petitioner-company. Apart from the fact that there has been no denial of the assertion of Shri H. R. Alva, we have no reason to disbelieve what has been stated by Shri H. R. Alva in his affidavit. In these circumstances, no argument is necessary to accept the plea of the petitioner that its legitimate expectation to act and hold to the earlier orders of the Government has been affected by the impugned order of the Government. Secondly, by reason of the reference, the petitioner is exposed to defending the proceedings before the Labour Court and other Courts which necessarily involves time and money. Lastly, on a reference under S. 10(1) of the Act, the petitioner is exposed to various constraints and proceedings before the criminal Courts also. On these facts, an order of reference made by the Government after having once rejected to make a reference, will undoubtedly have "civil consequences" on the petitioner. In our opinion, the view expressed by Venkataramiah, J., in Kirloskar Company's case that an order of reference will not have "civil consequences" is not accord with the views expressed by our Supreme Court, in Mohinder Singh Gill's case and has, therefore, to be held as not sound and correct. Even otherwise, with respect we find it difficult to agree with the views expressed by Venkataramiah, J., in Kirloskar Company's case that an order of reference made by the Government after having once refused to make a reference will not have "civil consequences". We are also of the view that the acceptance of the contention of the respondents that is making a reference, Government has not decided anything but has only indicated a forum would amount to really begging the question and is unsound.

24. We have earlier held that Government before making the impugned order of references which has "civil consequences" on the petitioner had not provided an opportunity of hearing either by filing written representations or an oral hearing to the petitioner and that the Government had provided such an opportunity only to respondent Nos. 2 to 15. We should also remember that on the first occasion when Government refused to make a reference, Government, as a matter of fact, had provided an opportunity of hearing to the petitioner and respondents 2 to 15. It is not the case of respondent No. 1 or the other respondents that the circumstances of the case or the urgency of the matter compelled the Government to deny that opportunity of hearing to the petitioner while providing such an opportunity to respondents Nos. 2 to 15. An examination of the events adverted to by us earlier, would undoubtedly exclude any imperative and unavoidable urgency for taking a decision without providing an opportunity of hearing to the petitioner. It is on these facts and circumstances, we have to examine whether on principle or authority the claim of the petitioner for an

opportunity of hearing is well-founded or not and not on any theoretical considerations for the acceptance of which, learned counsels for the respondents strenuously contended before us.

25. In England, the ruling of the House of Lords in *Ridge v. Baldwin* (1964 Appeal Cases 40) is considered to be an important landmark in the development of the principles of natural justice and its application before administrative authorities. Wade and Phillips in their *Constitutional Law* (Seventh Edition) at page 661 observe that "the narrowing in the scope of natural justice was arrested by the House of Lords in *Ridge v. Baldwin*, (1964 Appeal cases, 40). After the decision of the House of Lords in *Ridge*'s case. English Courts have consistently attempted to apply the principles of *audi alteram partem* before the administrative authorities or where the power to be exercised is only administrative in character, to many a situation which was earlier considered to be inconceivable. We consider it unnecessary to refer to and examine the various English decisions in details as our Supreme Court in *Kraipak*'s case and *Mohinder Singh Gill*'s case has examined them and has approved them.

26. In our country, the ruling of the Supreme Court in *Kraipak*'s case decided on 29-4-1969 is one such case. In *Kraipak*'s case, the Supreme Court while examining the validity of selections made to the initial constitution of the Indian Forest Service, has given a new dimension and content to the principles of natural justice in their application before the authorities exercising administrative powers. In para 14 of the report, the Supreme Court has pointed out that in the application of the natural justice, public good is not advanced by a right adherence to precedents. In another para of the report, the Supreme Court has held thus :

"20. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, the rules of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of person appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case".

On the dichotomy that existed earlier between administrative and quasi-judicial functions vis-a-vis the doctrine and the effect of the decision of the Supreme Court in *Kraipak*'s case, the Supreme Court in *Mohinder Singh Gill*'s case has held thus :

"The dichotomy between administrative and quasi-judicial function vis-a-vis the

doctrine of natural justice is presumably absolutescent after *Kraipak, A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, in *India and Schmidt*, (1969) a Ch. 149 in England.

Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceedings".

Our learned brother Rama Jois, J., in the order of reference has set out several important and relevant passages in *Kraipak's* case and *Mohinder Singh Gill's* case to ascertain the ratio decidendi of those cases and, therefore, we do not consider it necessary to reproduce those passages in our order once again.

27. In *Kraipak's* case itself our Supreme Court in the context of examining whether one of the important principles of natural justice, viz., *Nemo iudex in causa sua* (that no man shall be a Judge in his own cause) has ruled that the other important principle of natural justice, viz., the principle of *audi alteram partem* is also applicable to administrative proceedings. In *Mohinder Singh Gill's* case, our Supreme Court on a review of all its earlier rulings, the rulings of the English Courts, opinions of eminent jurists, has ruled that the second important principle of natural justice, viz., the principle of *audi alteram partem* applied before Government, and all other authorities exercising administrative powers when their decisions will have "civil consequences" on a citizen or a party and, therefore, such a citizen or a party is entitled to an opportunity of prehearing if the circumstances justify a prehearing and the same cannot be excluded on various considerations like delay and other factors that are generally pleaded for the exclusion of the said principle. As to the necessity or a requirement of an opportunity of hearing, the authority has no option, but as to the manner and extent of the opportunity that depends on the circumstances of each case, the nature of enquiry and various other factors. In enunciating the principle, the Supreme Court has pointed out, that the same was in the interest of fair-play, good administration and the rule of law envisaged by our Constitution. In the light of the principles enunciated by the Supreme Court in *Kraipak's* case and *Mohinder Singh Gill's* case, we hold that the Government before deciding to make a reference on the facts and circumstances of the case, was bound to provide an opportunity of hearing to the petitioner either by filing written representations or by providing an opportunity of oral hearing and by its failure to provide such an opportunity has committed a manifest illegality apparent on the face of the record resulting in substantial failure of justice to the petitioner.

28. We have upheld the claim of the petitioner for an opportunity of hearing on the ratio in *Kraipak's* case and *Mohinder Singh Gill's* case of the Supreme Court and, therefore, a detailed examination of the views expressed by Venkataramiah, J., in *Kirloskar Electric Company's* case which has occasioned a reference of this writ petition to a Division Bench or the rulings of the various other High Courts is not really necessary. But as the learned counsels for the parties have relied on several rulings, we consider it necessary to briefly indicate our views on those rulings also.

29. In Kirloskar Electric Company's case, Venkataramiah, J., on the facts of that case has ruled that a reference under S. 10(1)(c) of the Act to a Labour Court does not occasion any "civil consequences" to the management that had challenged the order of reference and was also not entitled to an opportunity of hearing, we have earlier pointed out that the views expressed by Venkataramiah, J., on the "civil consequences" is not in accord with the principles enunciated by the Supreme Court in Mohinder Singh Gill's case. We are also of the opinion that the views of Venkataramiah, J., if read as excluding the application of the principles of audi alteram partem to the facts and circumstances of the case, is opposed to the principles enunciated by our Supreme Court in Mohinder Singh Gill's case and is, therefore, not sound. Even otherwise, with respect we disagree with the views expressed by Venkataramiah, J., to the contrary. In Srikrishna Jute Mills Vs. Government of A.P. and Others, B.N. Elias and Co. Private Ltd. and Others Vs. G.P. Mukherjee and Others, ; and Good Year India Ltd., Jaipur Vs. Industrial Tribunal, Rajasthan, Jaipur and Others, the High Courts of Andhra Pradesh, Calcutta and Rajasthan, respectively, have taken a view similar to the view expressed by Venkataramiah, J., in Kirloskar Electric Company's case. Firstly, the view expressed in all these decisions rendered earlier to the ruling of the Supreme Court in Mohinder Singh Gill's case in our view, is no longer good law. Secondly, the grounds on which we have differed with the views expressed by Venkataramiah, J., hold good to the views expressed in these cases also.

30. Shri Soli Sorabji, learned Solicitor General, strongly relied on the ruling of Ramaprasad Rao, J., as he then was in K. Abdul Salam and Company v. State of Tamil Nadu and others, (vol. 43 (1973) Indian Factories Journal, 180) of Madras High Court and a Division Bench ruling of the same Court in Tiruchy Steel Rolling Mills Ltd. v. S. Gnanambandan and others, (vol. 46 (1974) Indian Factories Journal, 158) which has approved the principles enunciated by Ramaprasad Rao, J., Abdul Salam's case. In Abdul Salam's case, the facts were similar to the one that has arisen before us. On the basis of the principles enunciated in Kraipak's case, Ramaprasad Rao, J., has upheld a similar claim made by the petitioner in that case. We are in respectful agreement with the views expressed by Ramaprasad Rao, J., in Abdul Salam's case also approval by a Division Bench in Tiruchy Steel Rolling Mill's case. But on the view expressed by Ramaprasad Rao, J., that the principle of audi alteram partem would be inapplicable to a case where the Government suo moto changes its mind without anybody prompting them to do so, we should not be taken to have concurred with the same as we are not called upon to consider such a situation in the present case before us.

31. Shri Soli Sorabji, learned Solicitor General, next contended that the decision of the Government to refer the dispute without the application of the mind is based on irrelevant considerations and on irrelevant material and, therefore, the order of reference is liable to be quashed. In elaborating his contention, Shri Soli Sorabji pointed out, that the Government has not satisfied itself as to whether an industrial dispute existed or is apprehended and that even if an industrial dispute

exists or is apprehended, it had not satisfied itself as to whether it was expedient to refer the dispute for adjudication to the Labour Court at all. In support of his contention, Shri Soli Sorabji strongly relied on the ruling of the Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, . The learned counsels for the respondents strenuously contended that the decision of the Government is based on relevant consideration and material and the satisfaction of the Government is not open to challenge under Art. 226 of the Constitution learned counsels for the respondents contended that the petitioner had not challenged the existence of an industrial dispute and, therefore, the order of reference was justified for which reason this Court cannot examine the contention of the petitioner.

32. We will first take up the second contention of the respondents, as, in our view, if there is merit in that contention, we cannot really adjudicate the contention urged by Shri Soli Sorabji for the petitioner.

33. In the petition, the petitioner has seriously disputed the existence of an industrial dispute or an apprehended industrial dispute. On the other hand, it is the case of the petitioner that with the termination of respondent Nos. 2 to 14, industrial amity and peace have been restored and efficiency in cross-bar section has increased. In no part of the pleading, the petitioner has admitted the existence of an industrial dispute or apprehended industrial dispute. In paras 24 and 25 of the petition, the petitioner has specifically pleaded that the decision of the Governments been arrived at without the application of mind and is based on extraneous and irrelevant considerations in these circumstances, it would be wrong to hold that the petitioner had admitted the existence of an industrial dispute or an apprehended industrial dispute and its pleadings do not justify the examination of the contention urged by Shri Soli Sorabji before us. We, therefore, reject this contention of the learned counsels for the respondents.

34. A decision of the Government whether an industrial dispute exists or an industrial dispute is apprehended and if one exists or is apprehended whether it is expedient to make a reference or not so long as its decision is based on relevant considerations and material, is final and is not open to examination by this Court as if it is an appeal. However, if the decision of the Government is based on no material or even if there is material if the Government has not applied its mind to such material or if it has based its decision on irrelevant and extraneous considerations or left out of the considerations that are relevant, this Court, in exercise of its powers under Art. 226 of can undoubtedly interfere with such a decision of the Government (*vide State of Bombay Vs. K.P. Krishnan and Others*, and *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, It is in the light of these principles, we have to examine whether the impugned order of reference is sustainable or not.

35. Earlier we have pointed out that Government, on an examination of the relevant material and considerations, had refused to make a reference on 27-5-1976 and thereafter on 10-1-1977 initiative for making a reference came

from respondent No. 15. In its representation dated 10-1-77 addressed to the Chief Minister, the only new or additional factor that was pleaded by respondent No. 15 is that on the intervention of Government, the Management of Mico had reinstated the services of certain employees and the case of respondent Nos. 2 to 14 was analogous to the case of Mico employees. On that representation, the Chief Minister directed the Labour Commissioner to persuade the management of the petitioner-company to reinstate respondent Nos. 2 to 14 failing which to make a reference under the Act. In the report dated 23-2-1977 of the Labour Commissioner or in any of the notings or minutes, Government has not even addressed itself to ascertain whether an industrial dispute exists or is apprehended and if so whether it was expedient to refer the dispute to the Labour Court for adjudication. As we are able to see, the one and the only factor that can be said to have weighed with the Government to refer the dispute to the Labour Court is the refusal of the management to agree for reinstatement of the employees that had been terminated, viz., respondent Nos. 2 to 14 and not any other factor that is relevant to S. 10 of the Act. In these circumstances, we have no alternative but to hold that the decision of the Government to refer the dispute has been arrived at without the application of the mind to the relevant factors and relevant material and is, therefore, liable to be interfered with under Art. 226 of the Constitution.

36. In our view, the decision of the Government to refer the dispute is manifestly illegal and has occasioned substantial failure of justice to the petitioner and is, therefore, liable to be interfered with under Art. 226 of the Constitution. We, therefore, quash the impugned order of reference by issue of a writ in the nature of mandamus and direct the Presiding Officer, Labour Court, Bangalore, respondent No. 16, not to adjudicate the reference made to it by Government.

37. Rule made absolute. Petitioner is entitled to its costs. Advocate's fee Rs. 250.