

(1982) 01 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 713 and 1742 of 1981

Indian Tourism Development Corporation

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 29-01-1982

Acts Referred:

Citation : (1982) ILR Delhi 535 : (1982) LabIC 1309 : (1982) 2 SLJ 665

Hon'ble Judges : Prakash Narain, C.J;S.S. Chadha, J;N.N. Goswamy, J

Bench : Full Bench

Advocate : S.N. Bhandari, B.S. Banerjee, R.K. Mehta, B.N. Lokur, Rajni Kant and A.K. Gupta, for the Appellant;

Judgement

S.S. Chadha, J.

(1) Whether the President of India while administering the Union Territory of Delhi under Article 239 of the Constitution of India could confer upon the Lt. Governor or Administrator of Delhi the powers and functions of the "State Government" within the meaning of and under the Industrial Disputes Act, 1947 is the moot question raised in C. W. Ps. 713 and 1472 of 1981. Another question raised is whether the delegation by the Central Government u/s 39 of the said Act of the powers of the "State Government to the Secretary(Labor ,Delhi Administration is ultra virus of its powers.

(2) Under the Industrial Disputes Act. 1947(hereinafter called the Act), there is a broad division for the exercise of the powers in relation to various industrial and labour disputes and the powers are exercisable by the appropriate Government defined in Section 2(a) of the Act reading as follows : "(a) appropriate Government" means (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning the Industrial Finance Corporation of India

established u/s 3 of the Industrial Finance Corporation Act, 1948, or the Employers' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948, or the "Indian Airlines" and "Air-Indian" Corporations established u/s 3 of the Air Corporations Act, 1953, or the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956, or the Agricultural Refinance Corporation established u/s 3 of the Agricultural Refinance Corporation Act, 1963, or the Deposit Insurance Corporation established u/s 3 of the deposit Insurance Corporation Act, 1961, or the Unit Trust of India established u/s 3 of the Unit Trust of India Act, 1963. or the food Corporation of India established u/s 3 or a Board of Management established for two or more contiguous States u/s 16. of the Food Corporation Act, 1964; or a Regional Rural Bank established u/s 3 of the Regional Rural Banks Act, 1976, or a banking or an Insurance company, a mine, an oilfield a Cantonment Board, or a major port, the Central Government, and (ii) in relation to any other industrial dispute, the State Government." There is a clear out demarcation for the exercise of power and functions between the "Central Government" and the "State Government" in the field of industrial and labour disputes for the purposes of reference and other allied matters dealt by the various provisions of the Act. The constitution of the Labour Courts u/s 7 and Industrial Tribunals. u/s 7A has to be by the "appropriate Government". National Tribunals have to be constituted by the Central Government u/s 7B. Filling of the vacancies in the office of the Presiding Officer of a Labour Court Tribunal has to be by the "appropriate Government". The filling of the vacancies in the National Tribunals have to be made by the Central Government. The reference of the disputes u/s 10 to Labour Courts or Labour Tribunals have again to be by the "appropriate Government." The submission of the awards on conclusion is also to the "appropriate Government." The publication of the reports and the awards has then to be by the "appropriate. Government." The prohibition of the strikes and lock-outs is again by the ""appropriate Government". The recovery of money due from an employer is under the orders of the "appropriate Government", Power to add to the First Schedule any industry has also. been conferred on the "appropriate Government". There are various other provisions under the Act where the discharge of the functions is by the "appropriate Government" which has been defined in Section 2(a) of the Act. The scheme of the Act in relation to any industrial dispute is to confer power .on that Government whether the Central Government or the State Government. which is exercising executive or administrative authority. But for the purposes of the Act in relation to any particular industrial dispute, there cannot be more han one "appropriate Government "

(3) By notification No. S. O. 675 dated March 24, 196 5 published in the Gazette of India on April 1, 1961, the President, in pursuance of Clause (1) of Article 239 of the Constitution of India and in supersession of the two earlier notifications, directed that the powers and functions of the "State Government, under the Act, except in so far as they relate to any industrial dispute concerning the

Employees" State Insurance Corporation and except those u/s 38 of the Act. shall. subject to the control of the President, and until further orders, be respectively exercised and discharged by the Lt. Governor or the Chief Commissioner, as the case may be, of each of the Union territories of Delhi, Himachal Pradesh, Manipur, Tripura and the Andaman and Nicobar Islands within his jurisdiction. The references of the industrial disputes made by the Lt. Governor, Delhi under the provisions of Section 10 of the Act were subject matter of attack in several writ petitions in this Court. One such attack was built on a constitutional edifice in *Iron works Vs. Union of India and Others*, which came up for consideration before a Full Bench of this Court. The question was as to what is the meaning of the term "State Government" as used in Section 2(a)(ii) of the Act. In all these cases, Lt. Governor of Delhi had made referrer of the industrial disputes between the managements and the workman to the Labour Court or the Industrial Tribunal. The main argument was that the Lt. Governor is not the State Government and, Therefore, not the "appropriate Government" u/s 2(a)(ii) of the Act and on that ground it was contended by the management that the reference to the Court Tribunal was incompetent and illegal. The Full Bench noticed that the term "State Government" had not been, defined in the Act, but the General Clauses Act 1897 defines the terms "Central Government", "State" and "State Government". After reading the definitions it was opined that they made it plain that in relation to the administration of a Union Territory, the Administrator is the "appropriate Government" in relation to the industrial disputes. The Full Bench of this Court answering the question held that the Lt. Governor of Delhi or Administrator is a State Government within the meaning of Section 2(a)(ii) of the Industrial Disputes Act, 1947 read with Section 3(8)(b)(iii) and Section 3(60)(c) of the General Clauses Act, 1897 and that the reference by the Lt. Governor, Delhi is valid. The validity of the notification dated March 24, 1961 was impliedly upheld as the Union Territory of Delhi was held as being administered by the President acting, to such extent as he thought fit, through an Administrator appointed by him under Article 239 of the Constitution.

(4) By notification No.S. C. 1340 dated April 14, 1975 published in the Gazette of India dated April 26, 1975 in exercise of the powers conferred by Section 39 of the Act, the Central Government thereby directed that the powers of the State Government in regard to the Union Territory of Delhi exercisable by it under Sections 3, 10 and 10A, Sub-section (5) of Section 12 and Sections 17, 33B and 36A of the Act, be exercisable also by the Secretary(Labor ,Delhi Administration The Secretary(Labor ,Delhi Administration made references of the industrial disputes for adjudication. A number of writ petitions were filed seeking a writ of certiorari quashing the notification dated April 14, 1975 whereby the Central Government delegated the powers of the "appropriate Government" when it is the State Government to the Secretary(Labor).Delhi Administration, Delhi and also for quashing the orders of reference passed by Secretary (Labor), Delhi for adjudication of the industrial disputes. A batch of writ petitions came up for hearing before a Division Bench of this Court. One of the questions raised was

that the President while pur" porting to act under Article 239 of the Constitution of India could not confer the powers of he State Government under the Act to the Lt. Governor and, Therefore, the notification dated March 24, 1961 issued by him was bad. Since the Industrial Tribunals and Labour Courts were constituted under sections 7 and 7A of the Act and the appointments or vacancies of" the Presiding, Officers were filled under, .Section 8 of the Act by an order passed by the Lt. Governor, Delhi, the constitution of the Courts Tribunals as well. as the appointment of the Presiding Officers, was claimed to be in valid. C W. P. No. 1297 of 1979(2), "M/s Leela Separators Pvt. Ltd. v. ..Secretary (Labor) and Others" and other connected writ .petitions were decided by that Division Bench of this Court on March 5, 1981. It was held that the President could delegate the powers of the State Government under the Act if he acted under Section. 39 of the Act, but he could not do so under Article 239 of that Constitution of India; and that while acting u/s 39 of the Act, the President could have delegated the powers to the Lt. Governor, but then, it would be a delegation to the Lt. Governor and not as the Administrator to the Central Government or the State Government. In so far as the Full Bench judgment impliedly upholding the notification dated March 24, 1961 as being valid under Article 239, .the Division Bench recorded a dissent note. The Division Bench, however further held that the words "appropriate Government" in Section 39 Can be successively replaced by the words "State Government", ""Central Government" and the President" by virtue of the definitions in the general Clauses Act, 1897 and consequently, the power to delegate u/s 39 can be exercised in any of those names. It was ruled that in particular, the "President ,acting under Article 53 of the Constitution as the repository of the executive powers of the Union, can delegate the power of the "State Government" under the Act. Thus the validity of the notification of April 14, 1975 was upheld.

(5) In C, No. 713 of 1981, the challenge made is that the notification dated April 14, 1975 is beyond the scope and ambit of the powers of the Central Government as conferred by Section 39 of the Act, in that, the President while administering the Union Territory of Delhi by virtue of the powers conferred by Article 239 of the Constitution of India. does not act as the Head of the Central Government but his position is analogous to that of a Governor of a State. The allegation by the Central Government to the Secretary (Labor), Delhi Administration, is contended as illegal, invalid and beyond the scope of the powers u/s 39 of the Act. In C.W.P. No. 1472 of 1981, he challenge is again made to the validity of the notification dated March 24. 1961 on the strength of the decision of a Division Bench of this Court in the case of Leela Separators". These two matters came before another Division; Bench of this Court when Rule Nisi was issued, returnable before a Full Bench to resolve the conflict. That "show the matter is before us.

(6) The arguments of Mr. S. N. Bhandari, learned counsel for the petitioner in C. W. P. 713181 are like this. The Counsel first invited our attention to the provisions contained in Part V of the Constitution relating to the administration of

the "Union" and then to Part Vi relating to the administration of the "States". Originally, the States of the Indian Union were of three categories as enumerated in Parts A, B and C of the First Schedule to the Constitution, but after the Seventh Amendment, there are only two categories of the territories comprised in the Indian Union. The territories of India now comprise of: (a) the territories of the States and (b) the territories specified in the First Schedule. Part Viii of the Constitutions deals with the Union territories and Article 239 with the administration of the Union territories. Under Article 239, as it stood prior to the Seventh Amendment, the President occupied in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Raj Pramukh in Part B Status. Though the Part C States were centrally administered under Article 239, yet. they did not cease to be States or at any stage of administration merged in the Central Government The President who was the executive Head of the Pan C States was not functioning under the Constitution as the Head of Central Government but was administering as the Head of Part C States, Reliance is placed on *Satya Dev Bushahri Vs. Padam Dev and Others*, which lays down this view of the law. Reliance is also placed on *The State of Madhya Pradesh Vs. Shri Moula Bux and Others*, . Reliance . is further placed on *D. Gobalouslyamy Vs. Union Territory of Pondicherry and Others*, and *Ghousia Begum Vs. The Union Territory of Pondicherry*, , wherein it was held that when the President performs his functions under Article 239, he occupies a position different from that of the Head of the Central Government. The counsel proceeds that Article 239 also corresponds to Section 94(3) of the Government of India Act, 1935 which was relevant .to the administration of the Chief Commissioners" provinces. It provided that it would be administered by a Governor General acting, to such extent as he thought fit through a Chief Commissioner appointed by him in his discretion. An order made by the Governor General u/s 94(3) empowered the Chief Commissioner with the authority to administer a province. The Chief Commissioner of a Province did not become merged with the Central Government He remained a separate entity. Similarly a State specified in Part C of the First Schedule could be administered by the President acting of such extent as he thought fit through a Chief Commissioner or a Lt. Governor to be appointed by him. The Chief Commissioner or Lt. Governor of a Part C State thus could exercise power to such extent as he was authorised by the President to do so. Under the Government of India Act, 1935, Delhi was a Chief Commissioner"s province. Under the Constitution before the Seventh Amendment, it was a Part C State. The territory of the State of Delhi comprised the territory which was comprised in the Chief Commissioner"s province of Delhi. After the Seventh Amendment, Delhi is now specified in First Schedule as a Union Territory. The administration of the Union Territory of Delhi is vested in the. President under Article 239 which empowers the President to administer to such extent as he thinks fit through an Administrator .The Government of the Union Territory and the Cent- Government are not identical but two separate and distinct functioning under the Constitution. The affairs of the Central Government are different in many spheres from that of the affairs of a Union Territory. The President while

administering the Union Territory of Delhi occupies the position different from that of the Head of the Central Government. The President does not function as the Head of the Central Government, but as previously he was the Head of the Part C States and now as the Head of the Union Territory. In essence, the President's position under Article 239 is analogous to that of a Governor of State. The delegation of the executive powers of the President in relation to the Union Territory of Delhi by the Central Government in the impugned notification dated April 14, 1975, published on April 26, 1975, is thus contended as beyond the scope of its powers u/s 39 of the Act. According to the counsel, the President has no powers and functions under the Act as it is not the "appropriate Government." The power to refer an industrial dispute or the exercise of various powers under the Act is by the appropriate Government" which the President is not or could not be. The President could delegate the administration of Union Territory under Article 239 which postulates that the President could so act to such extent as he thought fit but only those powers which he had. The counsel concludes that the exercise of the power under the Act is by the "appropriate Government" as defined by Section 2(a) and thus the President has no power under the Act. The counsel then relies entirely on the judgment of the Division Bench of this Court in "Leela Separators" case and for the reasoning recorded therein and contend that the President could not, While purporting to act under Article 239, convey the powers of the State Government under the Act to the Lt. Governor and. Therefore, the notification dated March 24, 1961 is bad. Mr. Mukerjee, learned counsel for the petitioner in C. W. P. 1472/81 adopts these submissions.

(7) Before advertng to the relevant provisions of the Constitution, we may dilate on what is implied by the term "executive power". Although the Constitution has not made an absolute or rigid division of functions between the three wings of the State namely, the executive, the legislature and the judiciary, yet there are specific provisions in regard to the three heads" of powers. We are concerned in these cases with the executive power which is not defined in the Constitution. It is also not possible to frame an exhaustive definition what executive power or function implies. It is generally described as the residue which does not fall within the legislative or judicial power it would include the execution of the laws. Halbury's Laws of England 4th -Edition Volume Viii, para 814 says this

".....Executive functions are incapable of comprehensive definition, for they are merely the residue of functions of government after legislative and judicial functions have been taken away. They may, however, be said to entail the formulation or application of general policy in relation to particular situations or cases, or the making or execution of individual discretionary decisions. More specifically, they include the execution of law and policy, the maintenance of public order, the management of Crown property and nationalised industries and services. the direction of foreign policy, the conduct of military" operations, and the provision or supervision of Such services as education, public health transport and national insurance."

The implementation and the administration of the laws made by the legislature is an executive function. However, to the executive, exercise of legislative function in the, form of departmental or subordinate or delegated legislation are often entrusted specifically by the legislature, such as the power to frame rules and regulations or issue of notification which are essentially legislative in character. Sometimes, judicial authority is also entrusted to the executive by legislatures such as when the executive makes decision affecting personal or property rights. The executive when so empowered, exercises judicial or quasi-judicial functions in a limited manner. In *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , the extent of executive power is stated in paragraph 13 in these words :

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" THE limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has setup. Our constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State The executive function comprises both the determination of the policy as Well as carrying it into execution This evidently includes the .initiation of legislation. the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State."

(8) The executive, power of the Union vests in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (Article" 53) The executive power of the State vests in the Governor and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution (Article 154(1). Under the constitutional scheme, the executive power is demarcated -between the two in terms of the subject matter and Mr. M. K. Ramamiurthy, learned counsel for the workman is right in these submissions. The extent of the executive power of the Union is contained in Article 239. It says that subject to the provisions of the constitution, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. There is, however, a proviso to Article 73(1) that the executive power of the Union shall not, save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. The subject matter of laws that can be made by the Parliament are contained in Article 246. Under clause (1), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, in the Constitution referred to as the Union List, Parliament, and subject to clause (1)., the legislature of any State also, have

power to make laws with respect to any of the matters enumerated in List Iii in the Seventh Schedule, in the Constitution referred to as the Concurrent List. That is notwithstanding anything in clause (3). Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List Ii in the Seventh Schedule, in the Constitution referred to as the State List. In other words) Parliament has power to make laws under Article 246(1) and (2) in respect of subject matter of the Union List and the Concurrent List. The State Legislature has power to .make laws under Article 246(2) and (3) to the Concurrent List as well as to the State List. In a nutshell, the executive authority of the Union is absolute in respect of the matters contained in the Union List (List I), but is qualified in respect of Concurrent List (List III). This is the effect of proviso to Article 73(1). The executive power of every State which extends to the matters with respect to which the legislature of the State had power to make laws, is to be exercised in such a manner so as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State. The executive power of the Union further extends to giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Thus there is a complete decipherable demarcation between the executive functions of the Union and the executive function of the State, dependent on the subject matter of the three Lists.

(9) Article 258 provides for the power of the Union to confer powers on States in specified cases. The President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends. A law made by parliament which applies in any State may, notwithstanding that it relates to a matter with respect of which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of power and imposition of duties, upon the State or officers and authorities thereof. Correspondingly, Article 258A enables the Governor of a State with the consent of the Government of India to entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends. These two provisions give the mode of constitutional or statutory entrustment in relation to the exercise of the executive power of the Union to the State and vice-versa. The constitutional entrustment has also been provided in Article 239 in relation to the administration of the Union Territories as noticed hereinafter.

(10) Then, Article 246(4) provides that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. The territory of India comprises of the territories of the States and the Union territories specified in the First Schedule. The Union territories specified in First Schedule, Therefore, do not form part of the territory of India included in a

State. In Union territories, the Parliament has power to make laws in addition to the Union List and the Concurrent List on the subject matters contained in the State List. Under the constitution, the Union territories, Therefore, occupy a unique position in regard to the exercise of legislative power and have the over-riding legislative power is vested in the Parliament in respect of all subjects enumerated in Lists I, II and III Under Clause (1) of Article 53, the executive power of the Union is vested in the President. Under Article 73, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws. The President is the formal or constitutional head of the executive. The real executive power is vested in the Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions.

(11) The administration of the Union territories is provided for in Article 239 of the Constitution under part VIII relating to the Union territories : "'Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify". Article 239, Therefore, provides for three modes of administration of Union territories. The first mode is that the Parliament can by law provide and prescribe the mode of administration and its extent. Parliament had enacted in 1976 the Territorial Councils Act, 1956 to provide for the establishment of Territorial Councils for the Union Territories of Himachal Pradesh, Manipur and Tripura. The Constitution (Fourteenth) Amendment Act, 1962 added Pondicherry as the ninth item in the First Schedule Part II Article 239-A was inserted enabling Parliament by law to create for any of the Union Territories specified therein local legislatures or Council of Ministers of both with such constitution, powers and functions, in each case, as may be specified in the law. Government of Union Territories Act, 1963 provided for establishment of Legislative assemblies or Council of Ministers for certain Union territories. The Delhi Administration Act, 1966 is another law for the administration of Union Territory of Delhi to the extent provided in the Act. The second mode is that the administration of Union territories is by the President. The framers of the Constitution felt that there would be a physical impossibility of the President acting and exercising directly all powers of the executive and discharging executive functions in several Union territories. It is for this reason that the third mode has been provided by the Constitution makers for the exercise of the executive power by the President acting to such extent as he thinks fit through an administrator. The Union territories have been, given a separate existence to be administered in the manner provided in Article 239. A Union territory is a separate entity. To that extent the submission of the counsel for the petitioner is right that the Union Territory of Delhi has to some extent been approximated to what was originally a Part C State and enjoys a separate status, but the over-riding power remains with the Parliament in the legislative sphere and with the Union Government in regard to the executive functions. The President who is the

executive head of the Union Territory, of Delhi .while administering it is functioning under the Constitution as the head of and on behalf of the Union of India. The functions exercised by the President under Article 239 are the affairs of the Union. The expression "Union Territory" means that it is a territory of the Union to be administered by the President who is the executive head of the Union. The Administrator who may be appointed by the President to administer the Union Territory of Delhi is simply an extended hand of the President. The Administrator acts for the President and only to such extent as the President thinks fit. The Constitution of India contains several provisions laying down the powers and functions of the President. The Supreme Command of the defense Forces vests in the President but its exercise is regulated by law. Under Article 75(1), the Prime Minister is to be appointed by the President and the other ministers are to be appointed by the President on the advice of the Prime Minister. The President is empowered to summon each House of the Parliament to meet as also to prorogue the Houses or either House or dissolve the House of People. Article 103 requires a reference to the President for the determination of the question as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Clause (1) of Article 102. This is a quasi-judicial function of the President. The power to give assent to the Bills or withhold the assent is contained in Article III. The President is empowered under Article 123 to promulgate Ordinances during recess of Parliament. This is a legislative function. Every Judge of the Supreme Court is appointed by the President by warrant under his hand and seal: Every Judge of a High Court is also appointed by the President by warrant under his hand and seal. The Comptroller and Auditor General of India is appointed by the President by warrant under his hand and seal. Appointment of a Commission to investigate into the conditions of service of backward classes is by the President as also the constitution of the commission and committee of Parliament on official language. There are several other provisions in the Constitution whereby the function have been entrusted to the President. They may be in the form of legislative, judicial or executive functions. Some of them may be exercised by the President with the aid and advice of the Council of Ministers and some (on which we need not dilate here) are expressly vested in the President. But the functions under Article 239 are of the administration or Union territories .These functions are governmental function and are affairs of the Union. As noticed earlier, in the Union Territory of Delhi, the over-riding legislative power vests in the Parliament in respect of all subjects enumerated in Lists I, II and III. Under the scheme of the Constitution the executive power is made co-extensive with the legislative power. There is no demarcation in Chapter VIII of the Constitution in the discharge of the executive functions in respect of the subject matters of Lists I, II and III. Article 239 in its amplitude enable the President to exercise the executive power in the Union territory of Delhi embracing all the subject-matters.

(12) The term administration or the exercise of executive powers are synonymous; .just as the business of the Government would include all executive

business. The executive power of the Union is vested in the President. The implementation of the laws made by the Parliament is one of the executive functions of the Union. In the Union territory of Delhi, the whole gambit of the executive power except to the extent provided by Parliament in the Delhi Administration Act, 1966 is to be exercised by the President in the constitutional sense. The President as the executive head of the Union has the executive power of administering laws in the Union Territory of Delhi including the implementation of the various provisions of the Act. The notification dated March 24, 1961 issued by the President confers authority upon the Lt. Governor, Delhi to exercise the powers of the "State Government" when it is the "appropriate Government" in the matter of industrial disputes and the allied matters. The said notification is a statutory conferment or constitutional authorisation by the President to the exercise to the executive functions. Whether the functions exercised by the President are functions of the Union or the functions of the President they have equally to be exercised with the aid and advice of the Council of Ministers. The powers conferred on the President under Article 239 are to be exercised by him on the aid and advice of the Cabinet (See "J. Fernandes & Co. v. Deputy Chief Controller INE", Air 1975 S.C. 1203).

(13) In *Samsher Singh Vs. State of Punjab and Another*, , it was held :

" THE President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his. discretion. Wherever the Constitution requires the satisfaction of the President or the Governor or any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two. Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor."

Conduct of Government business is provided in the manner contained in Article 77. All executive action of the Government of India is to be expressed to be taken in the name of the President (Clause, (1). Clauses , and. (3) of Article 77, however is not limited in its operation to the executive action of the Government of India under Clause (1). Under Article 77(3) the President has to make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. The expression "Business of the Government .of Into" would include all executive business which would include the exercise of the executive power under Article

239 Of the Constitution. Under the Allocation of Business Rules, 1961, framed by the President under Article 77, the appointments of Lt. Governor is allocated to the Ministry of Home Affairs. Additional business for the Union territories is also allocated to the Ministry of Home Affairs which include "general questions relating to administration on subjects other than those dealt within other departments (Entry 122)". Reliance by the counsel for the petitioner to the allocation to the Ministry of Labour and Employment of "Trade Unions Industrial and Labour Disputes" as including the subject of the administration of the Act is wholly misconceived. As we read the various entries in the Allocation of Business Rules, 1961, we find a distinction has been drawn by the President between the Administration of various Acts passed by the Legislature and other activities. Whenever the Administration of any Act was to be allocated to a specified Ministry it is so expressed. The Administration; of the Act has not been entrusted to the Labour Ministry, and thus it would be covered by the said Entry 122. This question was not raised in the writ petition and has been urged only in C. M. 4229;8I in C. W.P. 1472/81 which has no merit.

(14) The first impugned notification of March 24, 1961 was issued in pursuance of clause (1) of Article 239 of the Constitution and gives a direction by the President that the powers and functions of the "State Government" under the Act, except in so far as they relate to any industrial dispute concerning the Employees" State Insurance Corporation and except those u/s 39 of the Act, shall, subject to the control of the President and until further orders be exercised and discharged by the Lt. Governor of the Union Territory of Delhi within his jurisdiction. The executive power extends to the administration and implementation of laws made on all subject matters including the Act. In the Union Territory, of Delhi it is the executive function of the Union exercisable by the President. The administration of the Act in the Union Territory of Delhi had vested in the President, and he has entrusted some functions to the Lt. Governor. All industrial disputes which are outside the definition in Section 2(a)(i) of the Act are the concern of the "State Government" u/s 2(a)(ii) of the Act. The true scope and the ambit of the expression "State Government" in the Act may now be seen. The Act has not defined as to what is the meaning to be assigned to the word "State Government" as used in" the Act and how it is to be construed. The Act is a Central Act. Section 3 of the General Clauses Act. 1897 says that in the General Clauses .Act, 1897 and in all Central Acts and Regulations made after the commencement of that Act, unless there is anything repugnant to the subject or context, the general definitions given therein would be applicable. Section 3(60) defines "State Government" (in so far it is material for our purpose) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government. The scope and ambit of the "Central Government" as used in Section 3(60) has again to be seen with reference to the definition given in Section 3(8) as Section 3 says it also applies to the General Clauses Act, 1897. Section 3(8) says "Central

Government" shall (after leaving unnecessary portions) in relation to anything done or to be done after the commencement of the Constitution, mean the President and shall include. (iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution. The President has already appointed for the administration of the Union Territory of Delhi an administrator with the designation of a Lt. Governor and this fact is not controverted. The President has issued the notification dated March 24, 1961 that the powers and functions of the "State Government" under the Act will be exercised and discharged by the Lt. Governor, Delhi. In relation to the industrial disputes and the exercise of other powers under the Act where the "appropriate Government" is the "State Government" and a function is to be discharged, then it could be validly discharged by the Lt. Governor, Delhi. This is the plain reading of the provisions of Section 2(a)(ii) of the Act read with Section 3(8)(b)(iii) and Section 3(60) of the General Clauses Act, 1897. Same is the ratio of the Full Bench in the "Patiala Iron Works" case (supra).

(15) The decisions in "Satya Deva" case (supra) and "Maula Bux" case (supra) (followed in the two decisions of Madras High Court) were concerned with the Part "C" States and not Union territories. Part "C" States were not identical in all respects with the Union territories and it would not be proper to apply the ratio of those decisions to Union territories. Even if we assume, that the President who is the executive head of the Union territory is not functioning under the Constitution as the head of the Union of India, even then in any case he is the Administrative Head of the Union territory. The President, acting under Article 239 could, Therefore, delegate the powers and functions other than the powers and functions of the Central Government under the Act. It would follow that the impugned notification delegating the functions of the "State Government under the Act to the Lt. Governor, Delhi and the further constitution of the Labour Courts and Tribunes and the reference made by the Lt. Governor of Delhi in pursuance of the delegated powers are perfectly valid.

(16) The Division Bench in "Leela Separator case" say that there is no definition in the General Clauses Act, 1897, enabling any other word or phrase to be substituted for the word "President" in Article 239(1) of the Constitution and so no further step is possible. This is ignoring the true scope and the effect of Article 239 providing for the administration of the Union territories or to the exercise of executive powers. We have diluted upon it to hold that the functions exercised by the President under Article 239(1) are the affairs of the Union to be exercised" by him on the aid and advice of the Council of Ministers. The Administrator who is appointed to administer within the extent of the delegation, is simply an extended hand of the President. The President has the executive power to administer the law and this power he has entrusted to the Administrator to be discharged by him. The impugned notification says that "the President hereby directs that the powers and functions of the State Government under the Industrial Disputes Act, 1947 except...., shall, subject to the control of the

President and until further orders be respectively exercise and discharged by the Lt. Governor.....". The "Central Government" has not directed the entrustment in the limited since it is understood by the Division Bench. The powers have been conferred by the President with the aid and advice of the Cabinet. That is how the Council of Ministers under the Allocation of Business rules, 1961 have transacted the business of the Government of India. We cannot understand the narrow approach of the Division Bench that to read "Central Government" for "President" in Article 239 would be to reverse the definition in Section 3(8) of the General Clauses Act, 1897. We are unable to persuade ourselves to agree that "the "President" acting under Article 239 is not the "Central Government", and hence not the "State Government" and, Therefore, not the "appropriate Government" under the Industrial Disputes Act". We are also unable to appreciate the line of reasoning of the Division Bench that the President while administering a Union territory under Article 239 cannot become the appropriate Government in Section 39 because the definitions in the General -Clauses Act, 1897 are of no avail. In our considered view, the administration of a Union territory by the President under Article 239 is not to be mixed up with the powers of a delegation u/s 39 of the Act. The two are distinct powers; one is of Constitutional entrustment of the administration under Article 239 and the other is the delegated legislation in the exercise of Statutory powers given by the Parliament under-Section 39. The fallacy which underlies the conclusions of the Division Bench, is in intermixing the two provisions, i.e. of Article 239 of the Constitution with Section 39 of the Act. Under Article 239 of the Constitution, the "appropriate Government "as defined In the act. does not come into. picture at all. Article 239 relevant only to the exercise the executive power i.e. of the administration of the Act. The executive poWer extends to the implementation of the Act. The President has the power to discharge those executive functions himself or discharge those executive functions through an Administrator who may be entrusted with the powers and duties. This is the effect and scope of Article 239. In H.L. Rodhey and Others Vs. Delhi Administration and Others, another Division Bench of this Court put it in different words: :

" THE expression "Union Territories" simply means Territory Of the Union. This is why Article 239 of the provides that such a Territory is to be administered by the President, who is the executive bead of the Union. The Administrator, who may be appointed by the President to administer the. union Territory is simply as officer or agent of the President He is not an entity in his own right. He merely acts for the President. The power of the President to authorise the Administrator to make rules for the Central Services -functioning in a particular Union Territory is expressly derivable from the proviso. to Article 309, which says that "it shall be competent turn the President or such person as he may direct" to make such rules."

The President by the impugned notification has entrusted the specified functions to the Lt. Governor when it is to act as the "State Government" under the Act. The "State Government" in a Union territory by virtue of Section 3(60) of the

General Clauses Act, 1897 would be the "Central Government". By virtue of definition in Section 3(8) of the "General Clauses Act, 1897, the "Central Government" shall mean the President. The President is, Therefore, the "State Government" within the meaning of Section 2(a)(ii) of the Act. The President is merge all function and exercise all powers under the Act when the appropriate Government is the "State Government". By virtue of further definition in Section 3(8) of the General Clauses Act, 1897 the "Central Government" means the President and includes in relation to the administration of a Union territory the Administrator acting within the Scope of the authority given to him under Article 239 of the Constitution. The discharge of the functions of the "State Government" under the Act are, Therefore, legally vested in the Administrator by the notification of March 24, 1961 the validity of which is hereby upheld.

(17) The second impugned, notification dated April 14, 1975 published in the Gazette of India dated April 26, 1975 was issued by the Central -Government in exercise of the powers by Section 39 of the. Act. Section 39 reads as follows :

" THE appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made there under shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or in the State Government, or any such officer or authority subordinate to the State Government, as may be specified in the notification ; and (b) where the appropriate Government if a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification."

combined reading of Section 2(a)(i) and 2(a)(ii) and Section 39(a) and 39(b) shows that Section 39(a) is related to the exercise of power and discharge of functions in the field of industrial disputes mentioned in Section 2(a)(i) and Section 39(b) is. related to the industrial disputes mentioned in Section 2(a)(i). By the impugned notification, the Central Government directed that the powers of the State Government in regard to the Union Territory of Delhi exercisable by it under Sections 3, 10 and 10-A, Subjection (5) of Section 12 and Sections 17, 33B and 33A of the Act, be exercisable also by the Seeretaiy (Labor) of the Delhi Administration. As already noticed, the Legislature in many cases entrusts to the Executive the exercise of legislative functions in the form of departmental or subordinate or delegated legislation, such as the power to frame rules and regulations or issue of notifications which are essentially legislative in character. The legislature could have expressed in the Act itself that the powers of the "appropriate Government" in certain specified matters would also be exercisable by specified officers of the Administration or Government. The legislature u/s 39 delegated its functions to the appropriate Government. The question men to be considered is as to which is the "appropriate Government" in Section 39 of the Act in relation to the discharge of the powers and functions of the "State

Government" in regard to the Union Territory of Delhi. The scheme of the Act in relation to any industrial dispute is to confer on that Government whether the Central Government or the State Government, which is exercising executive or administrative authority. Under the Act, there is a broad division of the exercise of the powers in relation to various industrial disputes and the powers are exercisable by the "appropriate Government" defined in Section 2(a). These cases with which we are concerned are in relation to other industrial disputes, other than those specified in Section 2(a)(i). The "appropriate Government" in relation to these disputes is the "State Government". The "State Government" is not defined in the Act and for this reason, resort is to be had to the definitions contained in the General Clauses Act, 1897. It says that in that Act and in all Central Acts and Regulations made after the commencement of that Act, unless there is anything repugnant in the subject or context, "State Government" as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government. Therefore, in the Union Territory of Delhi we have to read the "Central Government" for the "State Government" in Section 2(a)(ii) of the Act. The "appropriate Government" even in respect of disputes falling within Section 2(a)(ii) of the Act is the "Central Government". The Central Government has issued the impugned notification dated April 14, 1975 in exercise of the powers conferred by Section 39 of the Act and the notification has been published in the Gazette of India dated April 26, 1975. The Division Bench in "Leela Separators" case referred to the definitions contained in Section 3(60) and 3(8) of the General Clauses Act, 1897 and came to the conclusion that the words "appropriate Government" in Section- 39 can be successively replaced by the words "State Government", "Central Government" and "President" and consequently, the power to delegate u/s 39 can be exercised in any of those names. The delegation of the powers of the "State Government" by the impugned notification was upheld in that case. We are in respectfully agreement with that part of the reasoning and conclusion of the Division Bench.

(18) In C.W.P. No. 713 of 1981, M(s. India Tourism Development Corporation (for short called the Corporation) impugn the legality and validity of the award dated September 26, 1980 made by the Presiding Officer, Labour Court, Delhi on other grounds. The challenge is on these facts. Miss Aziz Marry Marcelina ("for short called the workman) was employed as a Trainee House Keeper since October 20, 1971 and was in the employment of Akbar Hotel of the Corporation. She applied for leave from December 22, 1973 to December 25, 1973 (both days inclusive) and the leave applied for was sanctioned by the Corporation. She was scheduled to report for duty on December 27, 1973 because December 26, 1973 was her .weekly off. The case of the Corporation is that after the leave originally sanctioned to her, no information, either orally or in writing, was received by the Corporation and as she failed to report for duty till January 3, 1974, she lost. the lien on her appointment and resultantly, her name stood struck off automatically

from the rolls with effect from January 4, 1974 in terms of Model Standing Order No. 9(3)" of Schedule I of the Industrial Employment "(Standing! Orders) "Central Rules, 1946 which is applicable to the Corporation. The said Rule reads :

"If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the leave and (b) explains to the" satisfaction of the employer or the officer specified in this behalf by the employer his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be keep on the badli list."

The Corporation by letter dated January 4, 1974 addressed to the workman recorded the fact that she had lost her lien on her appointment in Akbar Hotel with effect from January 4, 1974 (afternoon) and called upon the workman to collect her dues in full and final settlement of her accounts. The stand of the workman in reply to the said letter dated January 4, 1974 and further correspondence is that the workman went on leave and duly informed December 27, 1973 the Corporation regarding the extension other leave and that she made efforts to rejoin duty on January 10, 1974 along with medical certificate and fitness certificate but was not allowed to resume duty as an act of victimisation.

(19) An industrial dispute was raised by the workman by moving the conciliation machinery as provided under the Act after making a prior demand on the Corporation. Notice of the demand for reinstatement was received by the Corporation from the Union of the workman as also through the Conciliation Officer. Her claim was opposed before the Conciliation Officer. As there could not be any settlement, a failure report was submitted by the Conciliation Officer to the Delhi Administration. An order of reference was then made in these terms

" WHETHER the termination of services of Miss M.MarceJina is illegal and/or unjustified and if" so, to what relief is she entitled and what directions are necessary in this respect ?"

Pursuant to the order of reference, the presiding Officer, Labour Court, Delhi issued the usual notices to the parties as arrayed in the order of reference. The parties to the dispute filed the statement of claim, written statement and rejoinder. On the pleadings of the parties, the Labour Court framed the issue in terms of the reference. In support of the claim by the workman, she examined herself and two other witnesses, namely, Shri Pradeep Dua, W. W. 2 and Shri V. M. Subramaniam, Cashier of Akbar Hotel, W. W. 3. On behalf of the Corporation Shri J. P. Ahluwalia, A.P.O. of Akbar Hotel and Capt. M. S. Sharma, Security Officer were examined as M.W. 1 and M.W. 2.

(20) A contention was raised before the Labour Court that the said Standing .Orders were not applicable and the action of the Corporation could only have been taken in accordance with the provisions as laid down in the Delhi Shops and Establishments Act, 1954. No clear-cut finding was returned by the Labour Court in the impugned, award. It is deaf that by force of Section 12A of

the Industrial Employment (Standing Orders) Act, 1946, the provisions of Model Standing Orders as prescribed u/s 15 of the said Act applied to Akbar Hotel of the Corporation. There is material on the record to show that no Standing Orders have been finally certified under the said Act and as such the prescribed standing orders are deemed to be adopted in the establishment of the Corporation. At the time of the hearing in this Court, however, it was conceded .that the Industrial Employment (Standing Orders) Act, 1946, the Industrial Employment (Standing Orders) Central Rules, 1946 as also the Model Standing Orders are applicable to the Corporation.

(21) On the question of fact whether the workman had abstained from her duties turn a period of more than 8 days and had not returned within 8 days of the expiry of the leave and explained to the satisfaction of the Manager of the Corporation her inability to return before the expiry of her leave, the Labour Court appreciated the evidence recorded before it. The Labour Court came to the conclusion that an application for leave was sent by the workman through Shri Pradeep Dua on December 27, 1973 to the Corporation and was handed over to Capt. M. S. Sharma, Security Officer and this fact had been proved on the record by the statements of the workman and Shri Pradeep Dua, W.W.2. The Labour Court referred to the conduct of the Corporation itself from which an inference was drawn that definitely some papers had been sent to the Corporation and the said papers had been received by it. The Labour Court construed the statement of Capt. M. S. Sharma i.e. "I cannot say whether I received any letter from Miss Marcelina or leave application .in January, 1974 due to lapse of time" and drew an inference that it was not a sufficient rebuttal of the positive statements of the workman and Shri Pardeep Dua. The admission of M.W. I was also noticed that if a stranger comes, than he could deliver the leave application to the Security Officer. The Labour Court concluded .that the fact of sending the application and its receipt by the Corporation had been fully established. The Labour Court, on the construction of Model Standing Order No. 9 (3), came to the conclusion that the workman had led satisfactory Explanation that she could not come to resume duties prior to January 10, 1974 since she had been unwell and the Corporation had been informed about it. The inference drawn from this was that the case did not fall .under voluntary abandonment by the workman concerned. Reference was then made to the evidence on record to show that the workman had remained connected with the union activities and from time to time, disciplinary action bad been taken against her and the Corporation withdrew the action and allowed her to resume duties and, Therefore, the termination of the services of the workman was illegal and unjustified. As regards relief, it was noticed that it had come into evidence that the workman could not get a job although she tried at two places, namely, Alka Hotel and Claridges Hotel, that the Corporation had not led evidence that the workman had been employed after her services were terminated. The workman was held entitled to reinstatement with continuity of service with full back wages till the time she is reinstated. An award to that effect was made and later published.

(22) The submission of Shri S. N. Bhandari, the learned counsel for the Corporation is that the conclusions drawn by the Labour Court on the face of it are so wholly arbitrary and capricious that no reasonable person could have arrived at those conclusions and, Therefore, the High Court should interfere in exercise of its jurisdiction under Article 226. The true interpretation of Model Standing Order No. 9 (3), according to the counsel, is that a workman will lose his lien on his appointment in case he does not join his duties within 8 days of the expiry of his leave and it obviously means that the services are automatically terminated on the happening of that contingency and that the lien which has been lost, can only be revived on his return and explain within 8 days to the satisfaction of the Corporation his inability to return before the expiry of his leave. Since the workman in this case did not return till January 10, 1974 and did not offer any Explanation to the satisfaction of the Corporation of her inability to return before the expiry of her leave, says the counsel, the services stood automatically terminated on the happening of the contingency. Reliance is placed on "National Engg. industries Ltd., Jaipur and Hanam", 1967 (2) L. L. J. 883. The submission of Shri A. K. Gupta, the learned counsel for the workman, on the other hand, is that the High Court cannot convert itself in a proceedings under Article 226 of the Constitution a court of appeal and examine for itself the correctness of the impugned award or decide what is the proper view to be taken. The counsel further says that the workman had led satisfactory Explanation that she could not come to resume duty prior to January 10, 1974 since she had been unwell and, Therefore, no lien could be tested in the next eight days as there was no abandonment of employment. Relying on *Jai Shanker Vs. State of Rajasthan*, , the counsel urges that the legal rights of continued employment could not be taken away by a side wind of the standing orders. Reliance is also placed on *Kashibai Sachidanand Vs. Hindustan Pencils Private Limited*, and *Rambhuwal Thakar Prasad Vs. Phoenix Mills*, , wherein it was held that even after the expiry of the eight days of leave originally granted or subsequently extended, a workman has a right to report for duty and offer Explanation for his absence without leave or permission. The counsel says that it was obligatory for the employer to consider (even if on facts it is assumed that the application for leave was not sent on December 27, 1973) her Explanation tendered on January 10, 1974 and if the Corporation was not satisfied, then it was bound to "indicate the reasons and grounds to enable the workman to prove the averments of her Explanation. If the workman failed, only then there could be any legal fiction of the abandonment of the employment in terms of the Standing Orders but not otherwise.

(23) We have been, taken through the entire evidence, oral and documentary, led before the Labour Court and in fact the copies of the evidence and the relevant documents before the Labour Court were filed during the hearing. The finding of the Labour Court that the application for extension of leave was handed over on December 27, 1973 to Capt. M. S. Sharma who was at the material time the Security Officer in the Akbar Hotel cannot be adjudged as

perverse. What is to be seen is whether a reasonable person could come to that conclusion on the material on the record. There is a positive statement of the workman that on December 27, 1973 an application "for extension of leave stating the grounds of illness had been sent to the Corporation through Shri Pradeep Dua and the said leave was due to expire on January 9, 1974, that she presented to the Corporation the medical certificate speaking with regard to her sickness for the period December 27, 1973 to January 9, 1974 as also the fitness certificate and that the Corporation did not allow her to join duty Shri Pradeep Dua corroborated that the leave application had been handed over to Capt. Sharma, the Security Officer of the Corporation. Capt. Sharma, Security Officer did not specifically deny but only stated that he could not say whether he received any application from the workman or leave application in January, 1974 due to lapse of time. Capt. Sharma stated that he was not supposed to receive the leave applications of the employees and on this statement of fact he is contradicted by Shri J. P. Ahluwalia, M.W.I that a stranger could deliver the leave application in the security office. The sending of the leave application on December 27, 1973 finds mention in the correspondence between the parties as also in the letters of demand. With this material on the record, the Labour Court could come to the conclusion that the leave application was in fact delivered to the Management on December 27, 1973. This Court may interfere in the proceedings under Article 226 seeking a writ of certiorari to quash an award only if it suffers from jurisdictional defects or is vitiated by errors of law apparent on the face of the record or is violative of the rules of natural justice. The writ jurisdiction is not of appellate nature. We have reviewed the evidence only to find out whether the conclusion is supported by the evidence on the record or whether a reasonable person instructed reasonably in law could come to that conclusion. We find no error of law apparent on the face of the record.

(24) The workman had also led satisfactory Explanation that she could not come to resume duty prior to January 10, 1974 by filing a medical certificate. If the workman was continuously ill from December 27, 1973 till she reported for duty along with fitness certificate on January 10, 1974 to the Corporation, then the question of the workman having voluntarily abandoned the job cannot obviously arise. Her conduct of sending the leave application to the Corporation on December 27, 1973 when she was due to report for duty after her leave, militates against any intention of abandoning the services. This is the inference drawn by the Labour Court, though not in clear unequivocal words, in the impugned award. The Corporation has not indicated any reasons as to why it considered the Explanation of the workman as unsatisfactory except that there is an automatic termination of the services. Even in this Court there is no challenge that the medical certificate tendered by the workman is not genuine. The Labour Court found the justifiability of the reasons preventing the workman from reporting for duty on December 27, 1973 on the expiry of her sanctioned leave; and, Therefore, the serious consequences of automatic termination of services could not arise. The sudden illness is beyond the control of any workman. In this

view of the matter it is unnecessary to decide in this case the larger question of law raised during the hearing about the true interpretation of the Model Standing Order. This writ petition fails on all counts.

(25) The peculiar facts of C.W.P. No. 1472 of 1981 are these. The allegations made in the writ petition are that on January I, 1981 at about 2.00 P.M. one Subodh Singh working at the Sweets Counter of the Sona Rupa Restaurant of the management .(for short called the management) was caught red handed while misappropriating the sale proceeds of sweets sold to the customers, that though initially Subodh Singh admitted the theft; but later he instigated the other employees to resort to militant and violent acts in order to ward off legal consequences, that at about 4.30 P.M. a number of employees indulged in beating up of the counter clerk Shri Rakesh Behl and" caused extensive damage to valuable crockery, cutlery and furniture, inter alia, by throwing utensils and thereby also created chaos and considerable pandemonium and melee inside the restaurant as a consequence of which all customers including women and children had to rush out and one customer also received injuries and that the situation was controlled only on arrival of the Police. Specific averment is made that Subodh Singh admitted the misappropriation before the Police and the same- was recorded in the hand of Shri Bhim Bahadur who also counter-signed the confession. In the counter-affidavit on behalf of the Union of the workmen, it is admitted that Subodh Singh committed a theft on January I, 1981 and the same was admitted by him and for this reason the Union advised Subodh Singh to tender his resignation and have his dues finally settled with the management but there is denial of other averments .The management issued a general notice on January 1, 1981 (Annexure F" to the writ petition) notifying that Subodh Singh was caught red handed misappropriating the sale proceeds of sweets sold to a customer, the subsequent violence and the damage mentioned above. If was also stated that in view, of the violent, unlawful and subversive activities and with a view to maintain safety and security of. the property, men, material and customers of the restaurant, the management was left with no alternative than to suspend the working of the restaurant with immediate effect. The management called for an assurance from the workers that they would not resort to violence and other unlawful activities and would maintain discipline, safety and security of customers, men and materials before the restaurant could "be opened. This notice was displayed and copies sent to Secretary, Labour Department, Labour Commissioner, Police etc. The notice was in pursuance of a resolution of the "Board of directors of the management that the business activities of Sona Rupa Restaurant be suspended immediately in view of the violent and subversive activities of the workmen. The Union of the workmen lodged a complaint with the Labour Commissioner, Delhi alleging that the management had declared a lock-out and a request was made by the Union that the lockout be prohibited under the provisions of the Act. "Die Assistant Labour Commissioner, Delhi called upon the management in the letter dated January 13, 1981 for discussions in the matter. On the receipt of the letter dated January 13,

1981. the management wrote back to the Labour Commissioner giving a narration in similar words as mentioned earlier of the incident which led to the suspension of the working of the restaurant and reiterated that there was no lock-out. -

(26) The management again resolved on February 17, 1981 that in view of the violent and subversive activities of the workmen and there being no assurance from the workmen, the Sona Rupa restaurant be closed down with immediate effect and all workmen of the restaurant be informed accordingly and their account be settled in full and final settlement. The management issued a general notice dated February 18, 1981 notifying for the information of the workers that the restaurant was being closed down with immediate effect and that on the closure of the restaurant, the services- of the workers stood terminated and that the workers were also being individually informed about the closure of the restaurant and were advised to call on the Accounts Department for full and final settlement of their dues. Individual notices dated February 18/19, 1981 were also issued to the workmen. The Labour Department of the Delhi Administration was also informed about the decision to close down the restaurant with immediate effect for the reasons mentioned in the letter. The reasons mentioned were :

" ON account of violence and other subversive activities such as damage to the property, crockery, cutlery and furniture resorted to by the workers on 1-1-81 and later on owing to physical assault on the Chief Executive of the Restaurant on 16-2-81 by the workers."

The number of workers whose services were terminated on account of the closure of the restaurant was stated as 57.

(27) It appears that the Labour Commissioner called upon the Union as well as the management for discussions on various dates during February, 1981 before and after the issue of the notice of closure by the management. The Union of the workmen was calling it as a lock-out whereas the management always asserted it as a suspension of the working of the restaurant from January 2, 1981 and then the closure of the restaurant from February 18, 1981. -

(28) The management then entered into an agreement on March 30, 1981 with Shri Devi Prasad Tibrewala under which he was employed as a Catering Contractor with power to employ his own staff to cook food and material and serve the food to the customers in the restaurant. The management had entrusted the sale promotion job to the employees of the management as also the job of security and maintenance of the properties. The substance of the agreement dated March 30, 1981 was communicated to the Labour Commissioner, Delhi by the management in its letter dated April 3, 1981.

(29) By the impugned order dated April 27, 1981, in exercise of the powers conferred by Sections 10(1)(d) and 12(5) of the Act, the Secretary (Labor), Delhi Administration Delhi referred the following dispute to the Industrial Tribunal No.

It presided over by Shri S. C. Jain for adjudication : - "TERMS Of Reference Whether the workmen as shown in Annexure "A" are entitled to wages for a period of lock-out w.e.f. 1-1-81 and if so, what directions are necessary in this respect The challenge of the management to this notification in the nutshell is that the real industrial dispute about the existence or otherwise of lock-out has not been referred, with the result that it would not be open to the management to urge before the Industrial Tribunal whether there was at all a lock-out Another order dated April 27, 1981 was issued in exercise of the powers conferred by sub-section (3) of Section 10 of the Act stating that the Secretary (Labor), Delhi Administration, Delhi was satisfied that a lock-out had been declared from January 2, 1981 and was still continuing by the management and, Therefore, the Secretary prohibited the continuation of the lock-out in respect of the workmen as shown in Annexure "A" to the order by management of M/s. Sona Rupa restaurant. The challenge against is that this order has been passed on the imaginary and fictitious basis as if there was a lock-out and all the persons named in Annexure "A" to the order had been locked out by the management.

(30) In the counter-affidavit filed on behalf of the Delhi Administration, the material before the authority who passed the order is stated in these words :

"IT is submitted that the demand of the workmen was that the management had declared a lock-out and that the same be passed accordingly. The management contended that there was a temporary closure which subsequently was converted into permanent closure. It was also the case of the management that the services of the workmen had been terminated consequent upon the closure. It was evident that the place of business was closed and not the business itself. On 2-1-1981 the business was temporarily suspended and on 30-3-1981 the management entered into a catering contract and resumed business. Besides, no notice of closure was given as prescribed in Section 25 F of the Industrial Disputes Act, 1947. The contention of the management that there was a closure and not lock out was transparently frivolous. In these circumstances the order in question was issued. The same is valid and justified....."

(31) The submission of Shri Lokur, the learned counsel for the Delhi Administration is that the Delhi Administration is entitled to take into account the distinction laid down by the Supreme Court between the closure and lock-out and in accordance with the law to come to the conclusion that prima facie, it was a case of lock-out. Reliance is placed on, The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, wherein it was held that in case of closure, the employer does not merely close down the place of business, but he closes the business itself; and so the closure indicates final and irrevocable termination of business itself and lock-out, on the other hand, indicates the closure of the place of business and not the closure of business itself. Relying on Shambu Nath Goyal Vs. Bank of Baroda, the submission is that this Court is not competent to go into the sufficiency of the material before the Government to make reference. A further submission of the counsel which is

supported by Mr. Ramamurti, the learned counsel for the Union of the workmen is that it would be competent for the Industrial Tribunal to go into the question about the existence of lock-out itself and its validity and to determine the plea of the management that it was a mere closure. According to the counsel, making of an order of reference is only an administrative act and it is not a judicial or quasi-judicial act and thus cannot be examined by the High Court in the proceedings under Article 226. Reliance is placed on "State of Madras v. C. P. Sarathy" 1953 (1) L.J. 174. Relying on Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, it is submitted that adequacy and sufficiency of the material before the Government is not open, for judicial review.

(32) It is settled law that the jurisdiction of the Labour Court Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. An Industrial Adjudicator constituted under the Act is not vested with any inherent power or jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Article 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. The whole of the correspondence between the management and the Labour Commissioner, the Union of the workmen and the labour Commissioner and the notices displayed by the management (the substance of which has been reproduced above) were before the Secretary (Labor), Delhi Administration when it passed the order of reference dated April 27, 1981. We are of the view that the existence of lock-out itself being the real dispute between the management and its workmen, the term of reference proceeds on the assumption that there was lock-out with effect from January 1, 1981. There is a very thin line of distinction between a closure and a lock-out. The decision would depend on several factors which had to be investigated before reaching a final conclusion. The intention and pre-meditation of the decision is one such factor. The impact of the act of violence alleged by the management, the special nature of the business, the possibility to carry on the business, the safety and security of the customers are other relevant factors. All these had to be found as a fact to arrive at a decision whether it was closure or lock-out. There is no material whether the appropriate Government considered these vital factors in coming to the conclusion. We were shown the original file by Shri Lokur, the learned counsel for the Delhi Administration in which the decision for making reference under Sections 10(l)(d) and 12(5) of the Act and case for prohibition of the lock-out u/s 10(3) was considered simultaneously though the order was passed one after the other. The order u/s 10(3) records the satisfaction that a lock-out had been declared from January 2, 1981 and was still

continuing by the management. The real dispute between the parties was whether there was at all a lock-out or whether there was violence by the Workmen. and for that reason there was suspension of the workmen of the restaurant with effect from January 2, 1981 and whether the closure of the restaurant from February 18, 1981 was proper and for that reason the termination of the services of the workmen was justified and legal. The appropriate Government has failed to take into consideration the entire act of circumstances brought out by the management in the two notices displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was a lock-out or closure. Whether in fact there was a closure or lock-out is the real dispute which can more appropriately be determined in industrial adjudication. The facts and circumstances brought before us can) in no circumstances, lead to the conclusion that the stand was frivolous. The order u/s 10(3) says that the appropriate Government was satisfied that a lock-out had been declared from January 2, 1981 and was continuing. The affidavit in this Court says that the plea of the management that there was closure and not lock-out is frivolous.. The appropriate Government could not reach at final decision on the question whether it was lock-out or closure, because that would normally lie within the jurisdiction of the Industrial Tribunal. The Industrial Tribunal cannot go into that question as the real dispute has not been made the subject matter of the order of reference. The very basis of the order of reference is the period of look-out with effect from January 1, 1981 for a dispute regarding the entitlement of wages. It would not be open to the management to contend that the foundation of the dispute mentioned in the order of reference was not existing. The management would be debarred to contend that the true nature of the dispute was something different than that contained in the order of reference. Counsel for the respondents made a concession during the hearing that the dispute whether it was a closure or a look-out could be investigated by the Industrial Tribunal and no objection would be raised that it was not within the scope of reference. Such a course could not be adopted. It may be. open to the Industrial Tribunal to find out the exact nature of the dispute from the pleadings of the parties and other material. But the Industrial Tribunal could not enlarge the scope of the jurisdiction on concession and decide that there was a closure and no lock-out. That would be deciding the foundation of the dispute mentioned in the order of reference. Such a jurisdiction is not vested in the Industrial Tribunal. We are, Therefore, of the opinion that the order of reference has to be quashed as the real dispute has not been referred. It will be open to the-Delhi Administration to make another order of reference in the light of the material before it construed in accordance with the observations made by this Court.

(33) Section 10(3) of the Act says that where an industrial dispute has been referred to an Industrial Tribunal under that section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference The pre-condition to the exercise of power is the reference of an industrial dispute.

Since we have quashed the order of reference, the foundation of the order u/s 10(3) ceases to exist and, Therefore, it falls to the ground. It is, Therefore, not necessary to refer to the submissions made or the case law cited by the counsel for the parties on the merits or demerits of the order u/s 10(3).

(34) In the result, we over-rule the view taken by a Division Bench of this Court in "Leela Separators" case in C.W.P. 1297 of 1979 decided on March 5, 1981 and uphold the legality and validity of the notification dated March 24, 1961 issued by the President in exercise of the powers conferred under Article 239(1) of the Constitution as also of the notification dated April 14, 1975 issued by the Central Government in exercise of the powers conferred u/s 39 of the Act. C.W.P. 713 of 1981 fails and is dismissed. C.W.P. 1472 of 1981 is partly allowed. The two impugned notifications dated April 27, 1981 are quashed. It will be open to the "appropriate Government" to examine whether it will like to make fresh orders in the light of submissions made by this Court. On the facts and circumstances of this case, the parties are left to bear their own costs.