
(1991) 12 RAJ CK 0009
In the Rajasthan High Court
Case No : C.W.P. No. 2886 of 1990

Jaipur Polyspin Ltd.

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 11-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1994) 2 LLJ 917

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Virendra Agrawal, for the Appellant; Virendra Band, for the Respondent

Judgement

G.S. Singhvi, J.—In this writ petition the petitioner, namely, Jaipute Polyspin Limited, which is a public limited company, has prayed for the issuance of appropriate writ, order or direction for quash of the order dated April 13, 1990 (Annexure-8), passed by the State Government in exercise of its power u/s 10(1) (d) read with Section 12(5) of the Industrial Disputes Act, 1947, whereby the Government has referred for adjudication to the Industrial Tribunal, Jaipur the dispute as to whether the profit and loss accounts of M/s. Jaipur Polyspin Ltd., for the years 1982-83 to 1987-88 are correct and if not for which years the employees are entitled to Bonus.

2. The case set out by the petitioner company is that it is engaged in manufacturing of synthetic yarn at its factory in Industrial Area, Ringus, District Sikar. It started production in the financial year 1982-83 and from the beginning it is running in losses on account of market conditions, severe power cuts, labour problems and other troubles. It is a new company /establishment and is entitled to the benefits u/s 16 of the Payment of Bonus Act, 1965 (for short referred to as "the Bonus Act"). There are two Unions in the petitioner Company, namely, Rashtriya Mill Mazdoor Sangh, Reengus which is affiliated with Indian National

Trade Union Congress and Jaipur Polyspin Mazdoor Union which is affiliated with C.I.T.U. The first union is a majority union and is recognised by the management. Since the petitioner was not having profit, no bonus was paid to the employees during the financial years of 1982-83, 1983-84 and 1984-85. Neither the employees nor their majority union raised any demand for bonus during that period. For the year 1985-86, the Respondent No. 2, namely, Jaipur Polyspin Mazdoor Union raised a demand for grant of 15% bonus under the Bonus Act. A letter to this effect was sent to the General Manager of the Company on October 6, 1986. This demand was investigated into by the Labour Welfare Officer-cum-Conciliation Officer, Sikar and before the Conciliation Officer the parties agreed that according to the law bonus was not payable. On that basis the Conciliation Officer closed the file vide his order dated November 20, 1986 (Annexure- 2). For the year 1986-87, the Company was running in losses, therefore, neither the employees nor their unions made any claim for payment of bonus. The audited accounts for the Company for the financial year 1988-89 were published and they show that the company is still incurring losses. The Respondent No. 2, however, vide its letter dated September 20, 1988 (Annexure-3) made a demand for payment of bonus for the year 1987-88 at the rate of 20% of the wages. On the basis of this letter, the Conciliation Officer-cum-Regional Assistant Labour Commissioner, Sikar called the parties on October 14, 1988 for preliminary investigation of the demand u/s 12(2) of the Industrial Disputes Act, 1947. The petitioner Company submitted its reply dated October 14, 1988 in respect of the claim of Respondent No. 2 for payment of 20% bonus and submitted that no bonus was payable to the employees for the year 1987-88. The Respondent No. 2 reiterated its claim vide letter dated November 30, 1988. It asserted that the company had in fact earned profits. Respondent No. 2 requested that in the interest of the establishment the workmen should be allowed bonus for the year 1987-88 at an early date. The Conciliation Officer considered the rival claims of the parties and then vide his letter dated March 4, 1989 informed the President and Secretary of Respondent No. 2 that no action can be taken at his end. The Respondent No. 2 thereafter submitted a letter dated March 27, 1989 before the Conciliation Officer and requested that the dispute regarding payment of bonus for the year 1987-88 be referred for adjudication to the Industrial Tribunal. Thereafter the Conciliation Officer vide his letter dated November 9, 1989 submitted a failure report u/s 12(4) of 1947 Act indicating that while workmen had made a claim for payment of bonus the employer has stated that no bonus is payable. The workmen have described the accounts as erroneous and the explanation submitted by the employer is not acceptable to the workmen. After receipt of the failure report, the Government passed order for making a reference of dispute, as mentioned hereinabove, for adjudication by the Industrial Tribunal and a notification for this purpose has been issued on April 13, 1990.

3. In challenging the notification dated April 13, 1990 the petitioner has asserted that the alleged dispute which has been referred for adjudication is neither an

industrial dispute under " Section 22 of the Bonus Act nor u/s 2(k) of 1947 Act. Such matter cannot be referred for adjudication. According to the petitioner, the appropriate Government can refer a matter for adjudication when the same is an industrial dispute falling within the ambit of Section 2(k) of 1947 Act. Reference pertains to the correctness of the profit and loss accounts of the Company for the financial years 1982-83 to 1987-88. These accounts have been duly audited by the authorised auditors under the Companies Act and, therefore, u/s 23 of the Bonus Act, there is a presumption about the accuracy of accounts. The correctness or validity thereof cannot be made a subject matter of industrial dispute u/s 22 of the Bonus Act read with Section 2(k), 1947 Act. Thus, what has been referred for adjudication is not an industrial dispute at all. Further case of the petitioner is that an industrial dispute can be said to arise only when a demand is made by the workmen and the same is rejected by the employer. In the present case the only demand made by the union relates to the payment of bonus for the financial year 1987-88. This has not been accepted by the Management and thus, at the best it can be said that there is a dispute between the parties regarding the payment of bonus for the year 1987-88. The failure report also relates to this dispute. The Respondents have placed reliance only on the failure report of the Conciliation Officer and on no other material. Notwithstanding this, it has made the impugned reference regarding the correctness of the profit and loss accounts for the years 1982-83 to 1986-87 and the admissibility of bonus to the employees in case it is found that profit and loss accounts are not correct. The Union had also raised a demand for the payment of bonus for the year 1985-86 but subsequently agreed before the Conciliation Officer that the bonus was not payable and, therefore, the file was closed by the Conciliation Officer on November 20, 1986. It is also the case of the petitioner that there has been considerable delay in the making of the reference in respect of the profit and loss accounts for the years 1982-83 to 1986-87. Reopening of all the accounts will cause serious injury to the petitioner without any advantage to the workmen. Everything will be unsettled after a lapse of long time.

4. Respondent No. 1 has not chosen to file any reply to the writ petition but Respondent No. 2 has filed a reply in the form of preliminary objections. The objection raised by Respondent No. 2 is that demand for payment is an industrial dispute and since a dispute has been raised, the Labour Department was bound to register the same and initiate conciliation proceedings in the interest of industrial harmony. On account of the adamant attitude of the Management, amicable solution could not be arrived which resulted into the submission of the failure report to the Govt. by the Conciliation Officer. After consideration of the case, the State Government thought it fit to refer the matter to the Industrial Tribunal for adjudication. Any objection to the Government's jurisdiction to make a reference of such dispute is wholly misconceived and there is no justification for invoking writ jurisdiction by the High Court under Article 226 of the Constitution for quashing of the reference. The object of the petitioner in filing this writ petition is to delay and defeat the outcome of the dispute by exhausting

the workmen.

5. A preliminary objection has been raised by Shri Virendra Bandhu, learned counsel for Respondent No. 2, who has urged that the extraordinary jurisdiction of this Court must not be allowed to be invoked by the petitioner because the petitioner has a remedy available to him to raise all the objections on the validity of the reference before the Industrial Tribunal itself. Argument of Shri Bandhu is that the Tribunal has the jurisdiction to decide the controversy between the parties. It is also competent to decide the objections of the employer that the dispute does not come within the scope of the term "industrial dispute" and, therefore, the Government could not have made a reference. The Tribunal can pass appropriate order on the objection of the employer. Shri Bandhu argued that the points raised in the writ petition would involve determination of questions of fact and such matters cannot appropriately be decided in writ jurisdiction under Article 226 of the Constitution. Shri Bandhu placed reliance on the decisions of the Court in *Central India Machinery Manufacturing Co. Ltd. v. The State of Rajasthan and Ors.* ILR (1982) 32 Raj. 842 and in *Instrumentation Limited Kota v. The State of Rajasthan and Ors.* D.B. Civil Writ Petition No. 1834/86 decided on April 8, 1987. Shri Virendra Agarwal, learned counsel for the petitioner, on the other hand argued that the Court has ample jurisdiction to decide the validity of the reference in writ jurisdiction. Shri Agarwal argued that once it is found by the Court that the Government had acted beyond its jurisdiction in making a reference of dispute, which never existed, the Court not only can, but must, interfere so that the parties are not put to harassment of unnecessary litigation. Shri Agarwal further argued that the Court can decline to interfere in case it is found that the decision on the objection would involve investigation of question of fact or a mixed question of law and fact but if the Court finds that a pure question of law arises and the defect in reference is patent, interference under Article 226 of the Constitution is permissible. He placed reliance on the decisions of the Supreme Court in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, and the judgment of a Single Bench in *The Delhi Cloth and General Mills Ltd. v. State of Rajasthan and Ors.* S.B. Civil Writ Petition No. 1007/80. :

6. I have given my serious consideration to this issue. The jurisdiction of the High Court to issue an appropriate writ, order or direction is very wide and comprehensive. The framers of the Constitution incorporated Article 226 in the Constitution with the object of providing expeditious relief to the individuals or other persons wherever their fundamental or legal rights are violated or where the State, its agencies or public authorities act arbitrarily. Our Constitution designedly uses the term in the nature of order or direction and for any other purpose. Thus, the jurisdiction of the High Court is much more pervasive than the limited powers of issuing writs which vests in the British Courts. As early as in the year 1966, their Lordships of the Supreme Court had examined the nature and the scope of the powers conferred on the High Court by virtue of Article 226 of the Constitution in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward*,

Kanpur and Another, . In that case the Apex Court observed as under-

"This Article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England ; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart High Court can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restriction grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself."

The above exposition of law about the jurisdiction of the High Court has held the field for last 25 years and although the Courts have themselves innovated self-imposed limits and restraints on the exercise of the jurisdiction under Article 226 of the Constitution, nevertheless the plain language of Article 226 as expounded in Dwarka Nath's case does not contain any restraint and does not specify the parameters within which the High Court can exercise its jurisdiction. It has deliberately and designedly been left open to the discretion of the Court to exercise its jurisdiction in a given case.

7. The Industrial Disputes Act, 1947 and various other Industrial Legislations have been enacted by the Parliament and State Legislatures with the object of protecting the conditions of service of the workers, their rights to receive wages, bonus and other monetary benefits and also for amelioration of their conditions of working and at the same time, to make efforts to maintain industrial peace and harmony which is sine qua non for the industrial development of the nation. The law contemplates that effort should be made as far as possible to amicably settle the dispute between the employer and the employees. The 1947 Act at the same time provides for a machinery for adjudication of the disputes which may ultimately arise or which the Government genuinely thought are likely to arise between the employer and the employees of an industry or an establishment. The National Industrial Tribunal, the Industrial Tribunal, the Labour Court etc. have been constituted with the object of expeditious adjudication of the disputes which are referred to them for adjudication. These Industrial Courts and Tribunals are free from the shackles or the straight-jackets within which the Civil Courts are required to function. They are not bound by the procedural laws and the technical rules of evidence. Their proceedings should by and large be in

conformity with the principles of natural justice. While deciding the disputes between the parties, which are referred for adjudication to the Labour Court or the Industrial Tribunal, they are competent to adjudicate various questions of fact as well as of law. Even jurisdictional issues which are required to be determined on the basis of the facts which are placed before a Labour Court or Tribunal and the evidence of which is led before it can be decided by such Labour Court or Tribunal. The High Court ordinarily does not interfere with the reference made by the Government in exercise of its power u/s 10 read with Section 12 of 1947 Act and there are number of decisions of different Courts that such questions must be left to be decided by the Industrial Tribunals or the Labour Courts. The Courts are also of the view that the practice of the employer to raise objections regarding the jurisdiction of the Labour Court or the Tribunal or that of the Government to make a reference must not be encouraged because the whole object of expeditious adjudication of disputes by the Labour Court or the Tribunal is defeated if writ petitions challenging the competence of the Government to make a reference or the power of Labour Court or the Tribunal to adjudicate such disputes are frequently entertained or are entertained for asking. Nevertheless, if in a given case, the Court finds that the Government has acted in clear contravention of the provisions of law or has taken its decision on extraneous or irrelevant considerations and no investigation into disputed facts is involved, the High Court can in appropriate cases interfere with the order of reference passed by the State. The words of caution which have been highlighted in the judgments of the Supreme Court in *D. P. Maheshwari v. Delhi Administration*: 1983 11 Lab LJ 425 , and *Workmen employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited*, have always to be kept in mind by the High Court while exercising its jurisdiction under Article 226 of the Constitution, where a challenge is made to the competence of the Govt. to make a reference of the industrial dispute for adjudication by Industrial Tribunal or the Labour Court, at the same time the Court cannot ignore that a Constitution Bench of the Supreme Court in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, has held as under:-P 231 :

"There is no doubt that, in law, the employer is entitled to move the High Court even at the initial stage of the proceedings proposed to be taken before the Industrial Tribunal and seek to satisfy it that the dispute is not an industrial dispute and so the Industrial Tribunal has no Jurisdiction to embark upon the proposed enquiry. There is also no doubt that the proceedings before the Industrial Tribunal are in the nature of quasi-judicial proceedings and in respect of them a writ of certiorari can issue in a proper case. If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ."

While recognizing that complicated question of facts, it cannot be decided merely on affidavits and whenever a serious dispute arises between the employer and the employees, such dispute should be left to be tried by the Special Tribunals

constituted for the purpose. The Court observed as under (p.233):

"The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not, disputed".

"Whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties."

In Central India Machinery Manufacturing Co. Ltd. case (supra), the Court was called upon to consider the challenge made to a reference made by the State Government. The Court observed that "where a disputed question of fact about the signing of settlement between the employer and the workers" union is involved, such question cannot be decided by the High Court in exercise of its extraordinary jurisdiction". The Court also observed that the Court cannot examine the adequacy or sufficiency of the material on which the opinion is formed by the State Government to make or not to make a reference and that all such issues involving investigation into the question of fact can appropriately be decided by the Industrial Tribunal. In Instrumentation Limited, Kola case(supra), the Division Bench upheld the preliminary objection to the maintainability of the writ petition involving challenge to an order of reference. In that case the Division Bench made reference to the earlier decision in Central India Machinery Manufacturing Co. Ltd. case and took note of the objection raised on behalf of the union in regard to the validity of the bonafides of the settlement dated January 3, 1986 arrived at between the petitioner Company and the Union. The Court observed that the petitioner company was seeking to challenge the order of reference on the ground that on the date of passing of the stay order, there was no industrial dispute in existence which could be referred and in this connection, the petitioner Company had relied on settlement arrived at between the parties during the course of the conciliation proceedings and the Company claimed that it was binding. The workman had questioned the bonafides of the settlement as well as its fairness and the Division Bench further observed that the rival contentions give rise to the following questions:-

"(i) Is the settlement dated January 3, 1986 settlement arrived at during the course of conciliation and it covers the dispute referred for adjudication?

(ii) Is it open to the respondent Union to assail the validity of the settlement dated January 3, 1986 on the ground that it suffers from lack of bona fides and that it is not fair and, if so, the said settlement can be said to be invalid?

(iii) Was the settlement dated January 3, 1986 validly terminated by the respondent Union and it was not operative on the date of passing of the impugned order of reference?"

The Division Bench concluded that such questions cannot be said to be pure questions of law and for the purpose of deciding them, it might be necessary to

make an investigation into questions of fact. On that basis, the Court rejected the petition of the Company. Neither the decision in the Central India Machinery Manufacturing Co. Ltd. nor the decision in Instrumentation Ltd. lay down a proposition of law that in no case the Court should interfere with the order of reference in exercise of its extraordinary jurisdiction under Article 226 of the Constitution even though a pure question of law might arise for determination and even though the Court may find that what has been referred to the Industrial Tribunal or Labour Court for adjudication is in reality not an industrial dispute. In my opinion, the Court in exercise of its jurisdiction under Article 226 is entitled to interfere with the order of reference passed by the Government u/s 10 read with Section 12 of 1947 Act. In what types of cases the Court will interfere, will depend on the facts of each case. Thus, the preliminary objection raised by Shri Bandhu cannot be accepted.

8. Now coming to the merits of the case, it may straightway be observed that the Respondent No. 2 had raised demand for bonus for the year 1985-86 and vide its letter dated October 7, 1986(Annexure 1), it has claimed a grant of 15% bonus for the year 1985-86 under Bonus Act. Annexure 2 shows that the parties had approached the Labour Welfare Officer and before him they agreed that bonus was not payable as per law and, therefore, with the consent of both parties, the file was closed. By its letter dated September 20, 1988, the Respondent Union had made a claim for payment of bonus at the rate of 20% for the year 1987-88. This was denied by the Management as would appear vide letter dated October 14, 1988 on the ground that the unit had not earned profit. The union reiterated its claim vide letter dated November 30, 1988 and ultimately on its request, failure report dated November 9, 1989 was sent by the Conciliation Officer, Sikar to the Government. Perusal of Annexure-8 shows that the Government has taken notice of the fact that as per that report of the Conciliation Officer, the parties had not been able to enter into settlement and that on consideration of the Conciliation Officer's report, it was satisfied that the matter was required to be referred to the Industrial Tribunal. No; material has been placed on record by Respondent Nos. 1 and 2 to show that Respondent No. 2 had at any point of time made a claim for payment of bonus for the year 1982-83, 1983-84, 1984-85 and 1986-87. For the year 1985-86, claim was made but was given up in 1986 itself. After November 20, 1986 no claim for payment of bonus for that year was raised by Respondent No. 2. Thus, neither before the Management nor before the Conciliation Officer nor before any; other forum, the Respondent No. 2 has made any demand for payment of bonus for the years 1982-83, 1983-84, 1984-85 and 1985-86 either orally or in writing.

9. Question as to whether in this fact situation, the State Government was justified in making a reference vide notification dated September 13, 1990, where it could refer the dispute and as to whether the profit and loss accounts for the years 1982-83 to 1987-88 were correct or not, may now be examined. Shri Agarwal has argued that since there was no dispute or difference between the employer and the employees on the question of payment of bonus for the

years 1982-83 to 1986-87 the State Government had no jurisdiction to make a reference in the wide and unrestricted form in which it has made the reference. The State Government had no material before it except the failure report of the Conciliation Officer and from this failure report, it was not possible or permissible for the Government to form an opinion that there was a dispute regarding the payment of bonus for the years 1982-83 to 1986-87. Shri Agarwal argued that question about the correctness of the accounts could be decided only u/s 23 of the Bonus Act and not by way of reference u/s 10 of 1947 Act. Shri Bandhu on the other hand urged that Section 10 of 1947 Act confers wide powers on the Government to refer not only an industrial dispute but an apprehended dispute and that too at any point of time. Thus, physical existence of dispute is not a condition precedent for exercise of power by the Government u/s 10 of 1947 Act. He argued that the payment of bonus at the specified rates was an obligation of the employer as per Section 10 of 1965 Act. It was not even necessary for the workmen to raise a demand for payment of that bonus.

10. Sections 2(22), 10, 16(1), 16(1-A), 22 and 23 of the Bonus Act and Section 2(k) and part of Section 10(1) of 1947 Act can appropriately be reproduced :-

2(22) "words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

10. Payment of minimum bonus - Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words "one hundred rupees" the words "sixty rupees" were substituted.

16(1) Special provisions with respect to certain establishments-(1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of Sub-sections(1-A).(1-B) and (1-C).

16(1-A) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act, in relation to that year but without applying the provisions

of Section 15.

22. Reference of disputes under the Act-Where any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

23. Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies: - (1) Where, during the course of proceedings before any arbitrator or Tribunal under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State to which any dispute of the nature specified in Section 22 has been referred, the balance-sheet and the profit and loss account of an employer, being a corporation or a company, duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under Sub-section (1) of Section 226 of the Companies Act, 1956, are produced before it, then, the said authority may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode:

Provided that where the said authority is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

(2) When an application is made to the said authority by any trade Union being a party to the dispute or where there is no trade Union, by the employees being a party to the dispute, requiring any clarification relating to any item in the balance-sheet or the profit and loss account, it may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the trade union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

2(k) of 1947 Act: "Industrial Dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

10(1) of 1947 Act-Where the appropriate Government is of opinion that any

industrial dispute exists or is apprehended, it may at any time, by order in writing-

- (a) refer the dispute to a Board for promoting a settlement thereof ; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry ; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication : or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

provided that where the dispute relates to any : matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause(c).....

A perusal of the provisions contained in the Bonus Act shows that the words and expressions which are used in the Bonus Act are not defined in that Act and are defined in the 1947 Act usually for the meanings respectively assigned to them in 1947 Act. Section 10 makes it obligatory for the employer to make payment of bonus to the employees. This is called statutory bonus. However, Section 10 itself is sufficient to other provisions of the Act which include Section 16(1) and 16(1-A). Section 22 provides that a dispute between the employer and its employees with respect to the bonus payable under the Bonus Act or with respect to the application of the Act to an establishment in public sector, such dispute shall be termed to be an industrial dispute within the meaning of 1947 Act. Section 23 contains a provision attaching presumption about accuracy of balance-sheet and profit and loss account of the Company and also provides for the mode in which clarification regarding the interest made in the profit and loss accounts can be made. Section 2(k) defines the term industrial dispute while Section 10 empowers the Government to make reference of any industrial dispute which exists or is apprehended. This the Government can do at any time. A cumulative reading of all these provisions shows that the Government is empowered to make reference of the existing industrial dispute and of apprehending industrial disputes. The industrial dispute means any dispute or difference between the employer and the employer or between the employers and the workmen or between the workmen and the workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Thus, the existence of any dispute or difference is condition precedent before a dispute can be termed as an industrial dispute and can be made subject matter of a reference u/s 10 of 1947 Act. Shri Bandhu is correct that the powers of the Government are very wide and comprehensive but if in fact no dispute or difference exists between the employer

and his employees, the Government cannot make a reference. In *The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others*, their Lordships of the Supreme Court examined the scope of Section 2(k) with Section 10 of 1947 Act and observed (p. 839):

"If no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen, and workmen and workmen. The Government has to come to an opinion that an Industrial dispute does exist and that opinion can only be formed on the basis that there was a dispute between the employee and the employer."

In *Secretary, Cuttack Motor Association and Anr. v. State of Orissa and Ors* 1973 II LLJ 547 a Division Bench of Orissa High Court observed as under:- (at p.550)

"The power to make an order of reference u/s 10(1)(d) arises only when necessary opinion required thereunder is formed by the appropriate State Government with respect to the existence or apprehension of an industrial dispute. The opinion has to be formed before the order is made. If Government are not in a position to come to form the necessary opinion in the matter of existence of such relationship of employer and workmen which alone can give rise to an industrial dispute they would be precluded from forming an opinion as to the existence or apprehension of an industrial dispute. We are not able to comprehend as to how a reference can be ordered when Government have not found a definite opinion about such an essential prerequisite."

In *Orient Paper Mills Sramik Congress v. State of Orissa and Ors.* (1988-II-LLJ-75) Division Bench of the High Court quashed the order of reference on finding that the real grievance has not been taken into consideration. In doing so, the Court observed as under:- (at p. 78):

"However subjective the satisfaction of the State Government may be, but if the satisfaction is based on non-consideration of the relevant materials or considerations not germane to the issue, then the said opinion has to be interfered with by this Court in exercise of powers under Articles 226 and 227 of the Constitution. When an order of reference is challenged in a Court of law, the Court can make enquiry as to whether the point in dispute or the complaint or grievance of the union was taken into account or not. If the order of reference indicates that the real grievance has not been taken into consideration, then it would be within the powers of the Court to direct the State Government for re-consideration."

In that case the workmen had made a claim for payment of bonus at the rate of 25% instead of 20%, which they were receiving for long 12 years under different settlements and demands. The reference made was however to the effect as to what should be the quantum of bonus payable to the workmen of M/s. Orient Paper Mills, Brajrajnagar unit for the accounting year 1981-82 under the

Payment of Bonus Act, 1965 pursuant to the audited profit and loss account of M/s Orient Paper Mills, Brijrajnagar Unit, for the said accounting year. The Court held that the Government had not applied its mind to the real controversy before making a reference.

11. In another decision of the Orissa High Court The Management of Asha Central Multipurposes Co-operative Societies Ltd. and Ors. v. The Presiding Officer, Industrial Tribunal and Ors. reported in 1991 (62) FLR 710 the Division Bench held that although the satisfaction of the State Government is undoubtedly a subjective satisfaction and the formation of opinion is no doubt a subjective process, but when such opinion is formed on the basis that certain facts exist and it is established that the facts never existed or on the existing facts it is impossible for any one to form an opinion, then such an opinion is challengeable on the ground of total non-application of mind or on the ground that it was formed on collateral ground and was beyond the scope of the statute. In that case, Court found that items No. 2, 3 and 4 of the reference were not part of the demand made by the workmen and thus, there was no dispute in respect of the items No. 2, 3 and 4 of the reference. The reference was, therefore, clearly incompetent, inoperative and an award made on the basis of such reference was vitiated and liable to be quashed. In that case, the Court has also found that the Government had only considered the report of the Conciliation Officer for formation of its opinion that the industrial dispute existed and that in the said report the Conciliation Officer had recorded that the workmen had abandoned some disputes. The Government still made a reference of the same, in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, Their Lordships of the Supreme Court distinguished the case in its earlier decision in Sindhu Resettlement's case and observed as under (p. 4):

"(1) Section 10(1) of the Act confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. The formation of the opinion is a subjective one and the next step of making reference is an administrative act. It would be open to a party challenging a reference to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction, but if the dispute was an industrial dispute, its factual existence and expediency of making a reference in the circumstances of a particular case and the adequacy and sufficiency of the material on which the opinion was formed are matters beyond the pale of judicial scrutiny.

The dispute arose from the termination of services of the workmen. Retrenchment comprehends termination of service. The Union complained about the termination of services and demanded reinstatement with full back wages and the Government referred the dispute about termination of service brought about by way of retrenchment and for consequential relief. The language or the format in which the demand is couched is hardly decisive of the matter. The

substance of the matter is as to what was the grievance complained of by the workmen espoused by the Union and what the Industrial Tribunal is called upon to adjudicate. Viewed from this angle, it is crystal clear that the demand referred to the Industrial Tribunal is the same as was espoused and raised by the Union."

In *Shambu Nath Goyal Vs. Bank of Baroda*, also their Lordships have examined the definition of Industrial Dispute as well as the scope of Section 10(1) and then held : (PP.485-486) :

"The definition of industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947 shows that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine quo non. The term "Industrial dispute" connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the Section.

The power conferred by Section 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is also apprehended. It is an administrative decision and the Court cannot therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi-judicial determination. The factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceeding for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters."

In this case, their Lordships have relied on the consolidated decision of the Supreme Court in *State of Madras Vs. C.P. Sarathy and Another*, where the Apex Court had even before the amendment of Section 10 held that actual existence of dispute was not necessary and apprehension of the same was sufficient. From the various authorities to which reference has been made hereinabove, the principle of law which emerges is that the powers conferred on the State Government u/s 10(1) of 1947 Act to make a reference is discretionary. This power can be exercised by the Government on its being satisfied that an industrial dispute exists or is apprehended. The formation of the opinion is a

subjective one. Section 10 is therefore the foundation source of the power of the appropriate Government to set in motion the machinery for adjudication of the industrial disputes. Once the Government, after application of mind, forms an opinion that the dispute exists or is apprehended, it can refer it to the competent Labour Court or the Tribunal. However, it is also a settled principle of law that even though the power exercisable u/s 10(1) is discretionary and the formation of opinion is a subjective one, this discretion has to be exercised fairly and bona fide and not arbitrarily. The Government must consider the relevant materials and form its own opinion on germane circumstances. It is open to a party to challenge the so-called dispute which was referred, as not an industrial dispute and in that event, the Court in appropriate case, in exercise of its extraordinary jurisdiction can quash the order of reference. The argument that the power of the Government to make a reference is absolute and unbridled, cannot be accepted. It is also clear that for the purpose of making of reference, there need not be a written demand by the workmen. The demand need not be made to the management before approaching the Conciliation Officer. The Government can rely on the material which may include the report of the Conciliation Officer and if some material exists, the Court will not examine into its adequacy or sufficiency.

12. If the aforesaid principles are applied in the facts of this case, it is clear that the only material which has been relied upon by the Government for formation of its opinion about the existence of the dispute was the report of the Conciliation Officer. That report unmistakably related to the claim of bonus by the workmen for the year 1987-88. There was absolutely no material before the Government on the basis of which it could have directly or indirectly made a reference for the years 1982-83 to 1986-87. The Government has, however, chosen to refer the dispute regarding correctness of profit and loss accounts for the years 1982-83 to 1987-88 and the admissibility of bonus to the workmen to unspecified years. In my opinion, in the absence of any dispute or difference between the parties regarding the claim of the bonus for the years 1982- 83 to 1986-87, the Government was not competent to make reference for the years other than 1987-88. Thus, the order of reference passed by the Government is liable to be quashed and set aside.

13. In view of this finding, I do not consider it necessary to examine the plea of Shri Agarwal as to whether the question relating to the correctness of profit and loss accounts could be made the subject matter of the Industrial Dispute and can be referred by the Government for adjudication.

14. The result of the above discussion is that writ petition succeeds and is allowed. The notification dated April 13, 1990 issued by the Government is declared contrary to law and is quashed. The Government is, however, left free to reconsider the matter and pass fresh appropriate order in accordance with law. Parties are left to bear their own costs.