
(1971) 07 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 654 of 1970

Jute and Jute Goods Buffer Stock Association	APPELLANT
Vs	
The Second Industrial Tribunal of West Bengal and Others	RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1)(c), 226, 248
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(1), 10(2), 18(1)

Citation : 76 CWN 196

Hon'ble Judges : Sankar Prasad Mitra, J

Bench : Single Bench

Judgement

Sankar Prasad Mitra, J.—This is an application under Article 226 of the Constitution. The petitioner has challenged an order of reference dated the 16th October 1970, made by the Government of West Bengal in its Labour Department to an Industrial Tribunal constituted u/s 7A of the Industrial Disputes Act, 1947 as to whether the termination of services of Mrinal Kanti Bhowmick, the respondent No. 2, was justified and to what relief the said respondent was entitled. The facts briefly are that the respondent No. 2 was a clerk in the employ of the Jute and Jute Goods Buffer Stock Association, that is, the petitioner, which was a trade union registered under the Trade Unions Act, 1926. On the 20th May 1970, the petitioner terminated the services of the second respondent from the 30th June 1970. It is stated in paragraphs 4, 5 and 6 of the second respondent's affidavit-in-opposition affirmed on the 20th March 1971, that on the 30th May 1970, he was served with a registered notice terminating his services addressed by the petitioner through its Secretary N.S. Kothari. Thereafter, he approached the petitioner through the said N.S. Kothari for re-consideration of the matter and recall of the order of retrenchment served on him. The Secretary was reluctant to consider his proposal. There is no affidavit-in-reply by N.S. Kothari. But one Sital Kumar Gupta Deputy Secretary of the petitioner has affirmed an affidavit-in-reply on the 5th May 1971. In this affidavit the aforesaid allegations in the affidavit-in-opposition have not been denied.

2. On or about the 13th June 1970 the second respondent approached the Conciliation Officer of the Government of West Bengal with his grievances. The Conciliation Officer wrote to the petitioner on the 13th June 1970. By letter dated the 25th June 1970, addressed to the Assistant Labour Commissioner, West Bengal (that is the Conciliation Officer) the petitioner's Secretary N.S. Kothari replied to the Government's Memo No. 4176/972/70 dated the 13th June 1970, stated to have been received by the petitioner on the 20th June 1970. In this reply the petitioner has contended that it does not come within the purview of "industry" as defined in the Industrial Disputes Act and, as such, no "industrial dispute" can be raised by any of its employees. Without prejudice to this contention, the petitioner has stated that the second respondent's services had to be dispensed with owing to irregular attendance during 1969 inspite of warnings. It is stated further that the petitioner was willing to give him another "chance" on a trial basis for one month; but the second respondent refused to avail himself of the "chance" and wanted to collect his dues within a couple of days.

3. The Government presumably was not satisfied with the petitioner's reply and made the reference under challenge on the 16th October, 1970. The petitioner moved this Court thereafter and obtained a rule nisi on the 27th November 1970.

4. In support of the rule Learned Counsel for the petitioner has raised before me three contentions. His first contention is that the reference herein has been made on the basis of the provisions in Section 2A of the Industrial Disputes Act 1947, but the said section is invalid. His second contention is that the petitioner is not an "industry" within the meaning of the Industrial Disputes Act, 1947, and, as such, no order of reference under the said Act could be made by the State of West Bengal, And his third contention is that, in fact, there was no dispute between the petitioner and the second respondent inasmuch as the second respondent made no demands of the petitioner and went straight to the Conciliation Officer.

5. Learned Counsel for the petitioner submitted to me that if I were with him with regard to the invalidity of section 2A of the Industrial Disputes Act, I need not decide the other points raised by him. I shall, therefore, confine this judgment to the respective contentions of the parties on Section 2A.

Section 2A runs thus:

2A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with, or arising out of, such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

6. This section was introduced by an amendment made in 1965. There are

striking differences between the provisions of this section and the definition of "Industrial Dispute" in section 2 (k) which is as follows :

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person :

Before I proceed further let me set out the provisions of Section 10 (1) and (2) of the Act. These provisions are :

(1) 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 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) :

Provided further that where the dispute relates to a public utility service and a notice u/s 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously given or it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced;

(2) where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

7. From the above provisions it is clear that when an industrial dispute exists or is apprehended, the appropriate Government has the power either (a) to refer the dispute to a Board of Conciliation for promoting a settlement or (b) to refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry or (c) to refer it to a Labour Court or Tribunal for adjudication. The use of the word "may" in section 10(1) also confers on the appropriate. Government

a discretion to make no reference at all. Indeed, the significance of "may" in section 10 (1) is clear when contrasted with "shall" in the second proviso to section 10 (1) and also in section 10(2).

8. The report of a Board of conciliation or a Court of Inquiry is not binding on the parties while the Award of a Tribunal or a labour Court is binding. Moreover, a Labour Court or a Tribunal of Adjudication can in its Award order reinstatement of a dismissed employee; but if the appropriate Government chooses not to make any reference at all a dismissed employee's only remedy is to go to an ordinary civil court and obtain a decree for damages for wrongful dismissal.

9. On the face of it, therefore, section 10(1) is discriminatory inasmuch as it empowers the appropriate Government in the case of different sets of employees and workmen who are in all respects similarly situated to refer one case to a Board of Conciliation, another to a Court of Inquiry and a third either to a Labour Court or Tribunal for adjudication and to make no reference at all in the case of the fourth.

10. The problem created by the different choices open to the appropriate Government u/s 10 was raised in the Supreme Court in (1) *Niemia Textile Finishing Mills Ltd. v. The Second Punjab Tribunal & Ors.* reported in AIR 1957 S.C. 329. The Supreme Court upheld the validity of section 10 but in this case the new provisions of section 2A were not considered as the said section was introduced only in 1965. The reason why the Supreme Court thought that section 10 did not give to the appropriate Government an unguided or unfettered or uncontrolled discretion has been explained in paragraphs 16 and 20 of the judgment. In paragraph 16 at page 335 it is stated; "Whether one or the other of the steps should be taken by the appropriate Government must depend upon the exigencies of the situation, the imminence of the industrial strife resulting in cessation or interruption of industrial production and breach of industrial peace endangering public tranquillity and law and order. If the matter brooks delay the appropriate Government may start conciliation proceedings culminating in a reference to a Board of Conciliation and also Court of Enquiry, if need be, before a full-fledged reference is made to an Industrial Tribunal. If, on the other hand, the matter brooks no delay the appropriate Government may possibly refer the dispute to a Board of Conciliation before referring it for adjudication to an Industrial Tribunal or may straightway refer it for adjudication by the Industrial Tribunal".

11. In paragraph 20 at page 337 the Supreme Court says: "The basic idea underlying all the provisions of the Act is the settlement of industrial disputes and the promotion of industrial peace so that production may not be interrupted and the community in general may be benefited. This is the end which has got to be kept in view by the appropriate Government when exercising the discretion which is vested in it in the matter of making the reference to one or the other of the authorities under the Act....."

12. From the above quotations it is clear that the apparently discriminatory provisions of section 18(1) of the Industrial Disputes Act were saved by overriding considerations like (a) the imminence of industrial strife resulting in cessation or interruption of industrial production and (b) breach of industrial peace endangering public tranquillity and law and order. The Supreme Court was primarily concerned with the basic object of the Act, namely, the settlement of the industrial disputes and the promotion of the industrial peace so that production might not be interrupted and the community in general might be benefited. The criteria for the exercise of discretion u/s 10(1), in the opinion of Their Lordships of the Supreme Court, are to be found within the terms of the Act. The criteria are the likelihood of interruption of production or supply of goods and services to the community and the degree of imminence of industrial strife and breach of industrial peace.

13. In the context of these views expressed by the learned Judges of the Supreme Court one has to test the validity of Section 2A of the Industrial Disputes Act. When by the enactment (in 1965) of section 2A a dispute between an individual dismissed workman and his former employer was brought within the ambit of the powers conferred by section 10(1), the criteria above-mentioned could no longer be applied. Section 2A contemplates a case where the general body of workmen does not raise any dispute with the employer in connection with the employment or non-employment of the individual dismissed workman. In a case like this there can be no threat of interruption of production or of industrial strife or breach of industrial peace. The Government has no yardstick to judge the gravity or intensity of the peril. The Government is free to make a reference in the case of one workman and refuse a reference in the case of another although both of them may be situated in exactly similar circumstances.

14. In (2) *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, , various provisions of the U.P. Industrial Disputes Act and the Rules made thereunder were considered. In paragraph 15 at page 536 it has been observed : "The Act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Act is the prevention of industrial strife, strikes and lock-outs and the promotion of industrial peace and not to take the place of the ordinary tribunals of the land for the enforcement of contracts between an employer and an individual workman. Thus viewed the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, namely, the workmen, as a body or a considerable section of them make common cause with the individual workman and thus create conditions contemplated by section 3 of the U.P. Act which is the foundation of the State Governmental action under that Act. The other provisions which follow that section only subserve the carrying out of the objects of the Act specified therein."

15. It is true that the preamble and the relevant provisions of the U.P. Industrial

Disputes Act and those of the Act which I am considering are not exactly the same. But the provisions of section 2(k) of this Act read with its preamble and in other sections suggest that this Act also was meant for settlement of collective disputes between employers and workmen. And the enactment of Section 2A destroys the concept of an industrial dispute as a collective dispute. The provisions of section 2A appear to be against trade union rights and principles and do not fit into the general texture of the Act. Our Constitution by Article 19(1) (c) guarantees the right to form trade unions. Article 13 of the Constitution provides that all laws which are inconsistent with fundamental rights or contravene the injunction not to take away or abridge them shall to the extent of the inconsistency or contravention be void. In the present case so far as collective disputes are concerned the powers conferred by section 10 are valid : they are invalid only in relation to an individual dispute for the reasons already stated; and the two provisions are severable. Section 2A therefore, is in my opinion, void and inoperative.

16. My attention has been drawn to several authorities which have declared that section 2A is valid; but these authorities do not consider the proposition that section 10 read with section 2A confers an unfettered and unguided discretion on the appropriate Government and, as such, the validity of section 2A cannot be sustained.

17. Let us first take the decision of the Mysore High Court which upholds the validity of section 2A, In (3) P. Janardhana v. Union of India, AIR 1970 Mys 171, it is conceded that the provisions of the Industrial Disputes Act, 1947, other than section 2A, provides for settlement of disputes between an employer and employees collectively and not disputes between an employer and an individual employee, unless such dispute is espoused or sponsored by the Union of Employees or a considerable body of employees and that section 2A makes an exception to such Rules. But on that score section 2A, says the Mysore High Court, cannot be said to be inconsistent with or repugnant to the Act. The Mysore High Court is of opinion that the fact that section 2A was not in the Act when it was originally enacted, but was introduced subsequently by means of an Amending Act can make no difference for ascertaining whether there is any inconsistency or repugnancy. The Mysore High Court says that as the long title and preamble of the Act indicate, the main object of the Act is to make provision for investigation and settlement of industrial disputes. It is not correct to start with any pre-conceived notion that the Act is intended to give effect to the concept of collective bargaining only and that anything which is not a part of collective bargaining, is outside the scope of the Act. The words, "Industrial Disputes" occurring in the preamble to the Act are wide enough to cover a dispute between an employer and a single employee. There is no reason to infer, according to the Mysore High Court, that section 2A which provides for settlement of individual disputes between an employer and an individual employee in certain circumstances is outside the scope indicated in the preamble, namely, investigation and settlement of industrial disputes. Moreover,

says the Mysore High Court, the Preamble to an Act is merely, intended to indicate the main purpose of the Act and does not cover its entire ambit; the preamble cannot control the meaning or scope of any section in the Act; and when there is a conflict between the preamble and the enacting portion, the latter shall prevail. In this judgment the Mysore High Court has held, inter alia, that section 2A is within entry 22 of List III and within the legislative competence of Parliament and is not violative of Article 14 of the Constitution. The reasoning of the Mysore High Court, so far as Article 14 is concerned, is based on grounds different from those urged before me. The Mysore High Court has said that it is true that section 2A treats differently a workman who is discharged, dismissed, retrenched or whose services are terminated and a workman who has some other grievance regarding his employment or conditions of employment, Consequently an employer who discharges, dismisses, retrenches or terminates the services of his workman, is treated differently from an employer whose workman has a grievance in regard to his (the workman's) employment or conditions thereof. But such differential treatment of individual workman or employers does not amount to impermissible discrimination offending Article 14. There is an intelligible differentia which distinguishes an individual workman who is discharged, dismissed, retrenched or whose services have been terminated, and an individual workman who has some other grievance in regard to his employment or conditions thereof. Likewise, there is intelligible differentia between an employer who discharges, dismisses, retrenches or terminates the services of an individual workman and an employer whose workman has some other grievance regarding his employment or conditions thereof. Such differentia has a rational relation to the object sought to be achieved by the statute, namely, the Industrial Disputes Act. Looked at, whether from the point of view of an individual workman or from the point of view of an employer, the distinction made by section 2A between the grievance arising out of discharge, dismissal, retrenchment or termination of services and other grievances of an individual workman, is based on classification which has reasonable relationship to the object of the Act. The Mysore High Court is of the view that the question whether the classification in a given case is reasonable, must depend upon the facts and circumstances of that particular case. The test of reasonableness of the classification has to be applied to each individual case and no abstract standard of reasonableness of classification can be laid down. Hence decisions holding that classification made in certain cases are valid or invalid, though useful, cannot provide an answer to the question whether the impugned classification, in a given case, is valid or invalid.

18. It is clear, therefore, that what was really argued before the Mysore High Court was that in section 2A a discrimination had been made between a workman who had either been discharged or dismissed or retrenched or whose services had been terminated and a workman who had other grievances against his employer relating to his employment or the conditions thereof. The Mysore High Court was not invited to consider whether by reason of section 2A the

appropriate Government had been armed with discriminatory powers u/s 10.

19. The next case is the case (4) Fedders Lloyd Corporation Private Ltd. v. Lt. Governor, Delhi, reported in AIR 1970 Del 60. In this case the only point decided with respect to section 2A was that it was not ultra vires the Parliament which had power to enact it either under Entry 22 of the Concurrent List or under Entry 97 of the Union List read with Article 248 of the Constitution.

20. I shall now refer to the case of (5) T.V.S. Iyengar & Sons v. State of Madras, AIR 1970 Mad, 82. It was urged before the Madras High Court that Parliament had no power to legislate regarding disputes between an individual workman and his employer. The Madras High Court has held that Parliament has the power under Entry 22 of List III or in any event under Entry 97 of List I.

21. Then, there is the case of (6) Atlas Cycle Industries Ltd., Sonapat Vs. P.N. Thukral and Others, . Here also, it has been held that Section 2A is constitutionally valid (Presumably with reference to the powers of Parliament) and that a dispute between an individual workmen and the management can be referred for adjudication to the Labour Court. The learned Judge has relied on the reasonings he has given in another writ petition, but apparently the judgment thereon has not been reported as it was not placed before me.

22. These are all the cases of other High Courts to which my attention has been drawn. Counsel for the respondents could not refer to any judgment in which the points urged before me with regard to section, 2A on behalf of the petitioner herein, had been raised or considered.

23. Mr. P.P. Ghose, Learned Counsel for the State of West Bengal, has argued that the ratio of the (1) Niemla Textile case (A.I.R. 1957 S.C. 329) is that the criteria for the exercise of the discretion in section 10 are to be found in the objects of the Act as stated in the preamble, namely, the investigation and settlement of industrial disputes. He has said that by section 2A the definition of "industrial dispute" in section 2(k) has merely been extended and the Government may make a reference to the appropriate authority according as it desires, settlement or investigation or adjudication. This argument of Mr. Ghose is primarily based on the Supreme Court's observations in paragraph 19 of the judgment in the Niemla Textile case which runs thus:

.....Having regard to the provisions of the Act hereinbefore set out it is clear that section 10 is not discriminatory in its ambit and the appropriate Government is at liberty as and when the occasion arises to refer the industrial disputes arising or threatening to arise between the employers and the workmen to one or the other of the authorities according to the exigencies of the situation. No two cases are alike in nature and the industrial disputes which arise or are apprehended to arise in particular establishments or undertakings require to be treated having regard to the situation prevailing in the same. There cannot be any classification and the reference to the one or the other of the authorities has necessarily got to be determined in the exercise of its best discretion by the

appropriate Government. Such discretion is not an unfettered or uncontrolled discretion nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself. The various authorities are to be set up with particular ends in view and it is the achievement of the particular ends that guide the discretion of the appropriate Government in the matter of setting up one or the other of them. The purpose sought to be achieved by the Act has been well-defined in the preamble to the Act. The scope of industrial disputes is defined in section 2(k) of the Act and there are also provisions contained in the other sections of the Act which relate to strikes and lock-out, lay off and retrenchment as also the conditions of service, etc. remaining unchanged during the pendency of proceedings. These and analogous provisions sufficiently indicate the purpose and scope of the Act as also the various industrial disputes which may arise between the employers and their workmen which may have to be referred for settlement to the various authorities under the Act. The achievement of one or other of the objects in view by such reference to the Boards of Conciliation or Courts of Enquiry or Industrial Tribunals must guide and control the exercise of the discretion in that behalf of the appropriate Government and there is no scope, therefore, for the argument that the appropriate Government would be in a position to discriminate between one party and the other.

24. It is true that the Supreme Court has said in this paragraph that the criteria for the appropriate Government's exercise of discretion u/s 10 are to be found within the terms of the Act itself. And that is why, Mr. P.P. Ghose submits that since the preamble to the Act speaks of investigation and settlement of industrial disputes, section 2A cannot be ultra vires article 14 of the Constitution inasmuch as the discretion is to be exercised to achieve one or the other purpose indicated in the preamble depending on the exigencies of a particular situation. But Mr. Ghose's argument cannot be accepted for two reasons. Firstly, the Supreme Court's observations in paragraph 19 should not be considered in isolation from those made in paragraph 16 and 20 of the judgment in the *Niemla Textile* case which I have already quoted above. Secondly, it is contrary to the principles laid down for determining whether a statute is discriminatory in the case of the (7) *The State of West Bengal Vs. Anwar Ali Sarkar*, which is still the guiding authority on Article 14 of the Constitution. At page 93 in paragraph 54 S.R. Das, J. (as he then was) observes :

..... Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of legislation. In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved

by the Act. The differentia which is the basis of classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.....

25. These observations of S.R. Das, J. do not support Mr. P.P. Ghose's contention that so long as discretion is exercised in accordance with the criteria to be found in the objects of the Act, it cannot be said that the discretion is unfettered or unguided or uncontrolled. S.R. Das, J. has explicitly stated that the differentia constituting the basis of classification and the objects of the Act are two distinct things. Judged by this test the criteria, in the case of the relevant provisions of the Industrial Disputes Act, seems to be the extent to which industrial peace would be interrupted. And the object of the Act is the settlement of industrial disputes. In other words, the classification is based on the extent of threat to industrial peace. And the object is the settlement of industrial dispute. The classification and the objects cannot be mixed up. They are two separate conceptions. To my mind, in the provisions of section 2A of the Industrial Disputes Act one cannot find the qualities and characteristics of persons who may be grouped together that would be absent in persons standing outside the group. And if these qualities and characteristics cannot be found, the question of their reasonable relation to the object of the legislation will not arise. In fact, S.R. Das, J. in paragraph 61 at page 95 has reiterated : "The differentia and the object being, as I have said, different elements, it follows that the object by itself cannot be the basis of the classification of offences or the cases, for in the absence of any special circumstances which may distinguish one offence or one class of offences or one class of cases from another offence, or class of offences or class of cases the speedier trial is desirable in the disposal of all offences or classes of offences or classes of cases. Offences or cases cannot be classified into two categories on the basis of the preamble alone....."

I also intend to quote the concluding-observations of S.R. Das, J. in paragraph 64 at page 97. These observations are : "It is, therefore, clear....that the power to direct "cases" as distinct from "classes of cases" to be tried by a special Court contemplates and involves a purely arbitrary selection based on nothing more substantial than the whim and pleasure of the State Government, and without any appreciable relation to the necessity for a speedier trial. Here law lays an unequal hand on those who have committed intrinsically the same quality of offence. This power must inevitably result in discrimination and this discrimination is, in terms, incorporated in this part of the section itself and, therefore, this part of the section itself must incur our condemnation. It is not a question of an unconstitutional administration of a Statute otherwise valid on its face but here the unconstitutionality is writ large on the face of the Statute itself."

26. Applying these principles to the provisions of section 2A of the Industrial Disputes Act, 1947, I find that these provisions can be invoked whenever an employer (a) discharges, (b) dismisses, (c) retrenches or (d) otherwise terminates the services of an individual workman. The nature of the punishment

inflicted is basically the same whatever terminology may be attached to it. If five individual workmen who are entitled to invoke the provisions of section 2A approach the appropriate Government, then u/s 10 of the Act, the said Government has the power to send four of them to four different types of authorities with a view to investigation or settlement of the dispute and in the case of the fifth workman it may refuse to take any action at all at its whim and pleasure. In other words, five persons having the same grievance against either the same employer or different employers, would receive widely divergent treatments from the appropriate Government. The power that the appropriate Government enjoys u/s 10 results in discrimination when applied to cases coming within the scope of section 2A. In these circumstances, section 2A appears to me to be unconstitutional and must be struck down.

27. Mr. Ashim Ghose, Learned Counsel for the respondent No. 2, the dismissed workman, has argued before me that in this application section 10 of the Act cannot be challenged in the light of the introduction of section 2A. In the petition, says Mr. Ghose, there is no challenge to section 10 at all. It is pleaded in paragraph 15 (iv) of petition : "Section 2A of the Industrial Disputes Act is illegal, void, discriminatory and of no effect and offends against the provisions of Article 14 of the Constitution." This pleading, according to Mr. Ghose, is not sufficient to challenge the validity of section 10 of the Act. Section 2A, submits Mr. Ghose, merely gives an extended definition to "industrial disputes". There is nothing discriminatory in section 2A itself. I agree that a more specific pleading would have been desirable; but it would not be proper to throw out the application on the ground that section 10 has not been specifically referred to in paragraph 15 (iv) of the petition. The obvious intention of the petitioner is that section 2A, judged in the light of the provisions in section 10 offends against the protection guaranteed by Article 14 of the Constitution. In fact, this intention is explicit in the pleadings in paragraph 6 wherein the various option of the appropriate Government available u/s 10 have been pointedly referred to and the argument advanced before me on behalf of the petitioner has been sufficiently adumbrated.

28. Mr. Ashim Ghose has argued further that section 2A merely postulates a case where an individual dismissed workman raises a dispute and the other workmen are not parties or their union is not a party to the dispute. He says that there may be a threat to industrial peace even if the other workmen are not parties or their union is not a party to the dispute. This argument appears to be fallacious. A dispute arises when a demand is made and refused. When an individual dismissed workman demands reinstatement and is refused, the dispute is whether he should be reinstated or not. As soon as the other workmen demand his reinstatement and threaten to go on strike if he is not reinstated they become parties to that dispute; the dispute then becomes collective dispute and there would be no necessity for resorting to section 2A for the settlement of that dispute for maintenance of industrial peace. The threat to industrial peace and the general body of workmen being parties to the dispute are merely two different ways of stating one and the same thing. For all the reasons aforesaid I

am of opinion that section 2A of the Industrial Disputes Act, 1947 read with S. 10 thereof is void and illegal as it offends against the provisions of Article 14 of the Constitution. The rule nisi issued herein is made absolute. The proceedings had before the first respondent under reference No. 6956-I.R./IR/1 IL-617/70 dated the 16th October 1970 are set aside. And there would be a writ in the nature of mandamus directing the first respondent and the third respondent and each of them to forbear from enforcing or taking any steps to enforce or giving any effect to the said order of reference. Each party will bear and pay its own costs.