
(1966) 03 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1067 of 1964

Kamani Employees" Union

APPELLANT

Vs

Kamani Engineering Corporation, Ltd. and Others

RESPONDENT

Date of Decision : 15-03-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4), 10(5), 15

Citation : (1967) 14 FLR 97 : (1966) 2 LLJ 446

Hon'ble Judges : Y.S. Tambe, C.J.;B.D. Bal, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : State of Maharashtra Vs. Kamani Employees" Union and Others, AIR 1975 SC 635 : AIR 1973 SC 635 : (1975) LabIC 387 : (1975) 4 SCC 841 : (1974) 1 SCR 108

Tambe, C.J.—This is a petition by the union of the workmen working in the engineering industrial concern of the respondent 1, Kamani Engineering Corporation Ltd. Respondent 2 is the industrial tribunal and respondent 3 is the State of Maharashtra. The petitioners by the petition under Arts. 226 and 227 of the Constitution of India seek to get quashed the notification issued by the State Government on 18 January, 1964 and also seek to get quashed the order made by the industrial tribunal overruling the preliminary objection raised by the petitioners. Facts in brief are : The petitioners raised certain disputes for revision of wage-scales, dearness allowance, incentive production bonus scheme, etc., both in respect of daily-rated workmen as well as monthly-paid employees. These disputes were raised in February, 1961. Ultimately the State Government by its order No. AJK 2262-LAB-II, dated 18 December, 1962, referred certain disputes to the industrial tribunal for adjudication. The disputes relating to the daily-rated workmen referred for adjudication to the industrial tribunal were :

(1) Wage-scales and classification.

(2) Dearness allowance.

(3) Production bonus.

(4) Apprentices.

2. The disputes in respect of monthly-paid employees referred to the industrial tribunal were :

(1) Grades and scales of pay.

(2) Dearness allowance.

(3) Production bonus.

(4) Permanency.

(5) Abolition of marriage clause.

(6) Grade of canteen employees.

(7) Dearness allowance.

3. To this order, for brevity's sake, we will hereinafter refer as the first order of reference. It would at this stage be convenient to reproduce the material part of this order relating to the production bonus :

"Whereas the Government of Maharashtra is of opinion that an industrial dispute connected with the matters specified in the schedule appended hereto exists between the Kamani Engineering Corporation, Ltd., Kurla, Bombay, and the workmen employed under it;

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of S. 10 of the Industrial Disputes Act, 1947, the Government of Maharashtra is pleased to refer the said dispute for adjudication to the tribunal consisting of ...

Schedule

Part I - For daily-rated workmen - (1) * * * (2) * * * (3) Production bonus. -
The present incentive scheme should be revised as under :

(a) The scheme should be made applicable to all the departments of the company.

(b) When the production in the establishment reaches 500 tons in a month all the daily-rated workers should get 10 per cent of their earnings as production bonus, the number of workmen being the average number employed in the year 1960.

(c) For every 10 tons increase in a month's production above 500 tons a 2 per cent increase in the percentage should be given over and above that in Clause (b) above.

(d) The existing bylaws and clauses regarding the absenteeism, etc., should be abolished.

(e) Bonus should be determined by the ratio of days filled in by a worker to the number of working days in a month.

(f) The above benefits should be paid with retrospective effect from 1 July, 1961.

Part II - For monthly paid employees -

(1) * * * (2) * * *

(3) Production bonus. - (i) Monthly-rated employees connected directly with production.

Monthly-rated employees should be paid production bonus at the same rate as paid to daily-rated workmen.

(ii) Fifty per cent of the average production bonus paid to the employees directly connected with production, should be paid as production bonus to all other monthly-rated employees. Production bonus for all monthly-rated employees should be paid with retrospective effect from July, 1961."

4. On receipt of the order the industrial tribunal proceeded to deal with the afore said reference and on 8 January, 1964 arguments were heard by the tribunal and the case was closed for making an award. On 18 January, 1964 the Government of Maharashtra made another order which the petitioners seek to get quashed by this petition. It would be convenient to reproduce the material part of this order in order to appreciate the arguments advanced before us :

"Whereas by Government order, Industries and Labour Department, dated 18 December, 1962 an industrial dispute between the Kamani Engineering Corporation and the workmen employed under it, connected with the matters specified in the schedule to Government order dated 18 December, 1962, has been referred for adjudication to the tribunal consisting of

And whereas one of the matters so referred for adjudication relates to revision of production bonus scheme for the workmen of the said company;

And whereas the said company has represented to Government that the terms of reference of the tribunal be so supplemented as, to add the term of reference specified in the schedule appended hereto (hereinafter referred to as "the said matter";

And whereas the Government of Maharashtra is of opinion that the said matter is connected with or relevant to the said dispute;

6. Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of S. 10 of the Industrial Disputes Act, 1947, the Government of Maharashtra hereby refers the said matter for adjudication to the tribunal consisting of Sri M. R. Meher

Schedule

Should the existing incentive scheme of production bonus be replaced by the new incentive scheme evolved by Ibcon (Private), Ltd., in their report dated (sic) October, 1963 as desired by management."

5. This order will be called the second order of reference. The first order of reference is numbered by the tribunal as Reference (I.T.) No. 274 of 1962 and the second order of reference is numbered as Reference (I.T.) No. 21 of 1964.

6. On 29 January, 1964 respondent 1 made an application to the tribunal to hear the two references together and not to make any order on the first reference without hearing the second reference. The hearing of that application was fixed by the tribunal On 6 February, 1964. The tribunal, however, did not altogether postpone making an award in respect of the matters referred to it in the first reference. On 4 February, 1964 the tribunal made its award on all matters other than production bonus scheme. That award has been styled as part I of the award. It may be stated that the petitioners had also made an application to the tribunal that the second order of reference was incompetent and has been made without jurisdiction and the tribunal therefore should proceed to make the final award in respect of production bonus scheme also. The preliminary objection raised by the petitioners in brief was that the second reference was bad in law and incompetent. The dispute referred to the tribunal under the first reference was fully heard and it was only at the fag-end of the first reference that respondent 1 with mala fide intention has managed to get the second order of reference passed by the Government to frustrate the award that might have been made in the first reference. The Government has made the second order of reference without consulting the workmen. No notice of change was given by respondent 1. There was no dispute existing or apprehended regarding the new production bonus scheme proposed by the company. The new scheme is not in any manner connected with the earlier reference. The second reference has the effect of cancelling and withdrawing the earlier reference in so far as it relates to the production bonus. It is on these grounds that the petitioners alleged that the second order of reference made by the Government was without jurisdiction and beyond its competence. The tribunal, after hearing both the parties, by its order dated 17 April, 1964 overruled the aforesaid preliminary objection of the petitioners as to the maintainability of the second reference. The tribunal also rejected the application of respondent 1 for the postponement of making an award in respect of the production bonus scheme, as required by the first order of reference. The tribunal, however, has in its order observed that the award it was making in respect of the production bonus scheme was only an interim award until the determination of the second reference. The tribunal then proceed and made the interim award in respect of the production bonus scheme also. The reason given by the tribunal in rejecting respondent 1's application for staying the proceedings are in the following words :

"I am of the opinion that it would not be fair to the workmen to postpone the decision on the demands of the workmen in the earlier reference which are of

long standing, merely because the company has a proposal to substitute the existing production bonus scheme by a new incentive bonus scheme evolved by Ibcons (Private), Ltd. There are clauses in the existing production bonus scheme which are not fair to the workmen. There are some workmen who should be given incentive bonus who have not been getting it. The wage-scales and dearness allowance have been fixed having regard to the fact that there is also a production bonus scheme, and it would not be fair that these workmen who ought to get production bonus and are not getting it should be denied production bonus merely because there is another reference regarding the proposed substitution of the existing scheme by an entirely different scheme. The second reference was made on 18 January, 1964 and the statement of claim has been filed by the company on 13 April, 1964. It is bound to take a long time as it involves complicated issues, but I am clearly of the opinion that the decision on the workmen's demands in regard to the existing production bonus scheme should not be put off till the decision on the demand of the company in Reference (I.T.) No. 21 of 1964."

7. As already stated, the petitioners by this petition pray that the second order of reference dated 18 January, 1964 and the order of the tribunal dated 17 February, 1964 overruling their preliminary objection that the second reference was incompetent be quashed. Sri Kulkarni, learned counsel for the petitioners, contends that the second order of reference interferes with the exercise of the jurisdiction of the industrial tribunal in dealing with the first order of reference. He argued that the second order of reference in effect amounts withdrawal of the first reference and therefore it is bad in law and beyond the competence of the State Government. It is his argument that on the making of the first order of reference the tribunal was seized of the reference. Section 15 casts an obligation on the tribunal to dispose of the reference as expeditiously as possible. The tribunal had completed the hearing and was about to deliver an award. It is just to prevent the tribunal from making an award that respondent 1, behind the back of the petitioners, approached the Government and got the second order of reference made. But for the second order of reference the tribunal would have made its award a final award on all issues. On account of the second order of reference the tribunal had to split its award. Even though it had made an award in respect of production bonus scheme, that only is an interim award. It is in this manner that the second order of reference interferes with the exercise of the jurisdiction of the tribunal. The effect of the second order of reference is that the question that has been first referred to the tribunal has been basically altered. Under the first order of reference the tribunal had only to decide whether the production bonus scheme should be liberalized as claimed by the workmen or not. Now, as a result of the second order of reference, the tribunal has first to consider whether the production bonus scheme which should be introduced in the industrial concern should be the one proposed by Ibcon or to retain the one already in force. The consideration of the demands is thus getting postponed till the decision of the first issue and that, in effect, according to Sri Kulkarni, is the

withdrawal of the first order of reference so far as production bonus scheme is concerned. Sri Kulkarni in support of his contention placed reliance on *The State of Bihar Vs. D.N. Ganguly and Others*, *Press Labour Union, Maduarai v. Express Newspapers (Private), Ltd.*, and others 1963 I L.L.J. 492, and *Chandra Spinning and Weaving Mills Ltd., Bangalore Vs. State of Mysore and Others*, .

8. Sri Setalvad, learned counsel for the State Government, on the other hand, contends that the second order of reference has not the effect either of withdrawing the first order of reference or cancelling the first order of reference. The second order of reference is only in respect of a matter connected with the dispute which had already been referred to the adjudication of the tribunal under the first order of reference and therefore it is merely an amplification of the original order of reference. Sri Sorabji learned counsel for respondent 1, also has more or less contended to the same effect. It is their argument that there is no withdrawal or cancellation of the first order or reference, inasmuch as it is still open to the tribunal to grant to the petitioners the full relief asked by them in the first of order of reference in respect of production bonus, and that according to Sri Setalvad and Sri Sorabji is the real test. If the power of the tribunal to grant relief in respect of a matter covered by the first order of reference is not taken away by the second order of reference, then the second order of reference does not amount to the withdrawal or the cancellation of the first order of reference. The decisions on which reliance has been placed by them are : *S.I.E.L.R. Organizations Madras State* 1954 I L.L.J. 8; *N. N. Chakravarty v. State* AIR 1960 GAU 11; *Management of Thambi Motor Service, Salem Vs. Presiding Officer, Labour Court, Coimbatore and Another*, ; *Jaipur Spinning and Weaving Mills, Ltd. v. State of Rajasthan* 1661 I L.L.J. 747 ; *State of Maharashtra Vs. Anantha Krishnan (K.) and Others*, ; *Workers employed in Thambi Motor Service Vs. Management of Thambi Motor Service and Another*, , *The Employers of Daily News, Secunderabad Vs. Workmen of Daily News, Secunderabad and Another*, , *Mangharam (J.B.) and Co. Vs. Kher (K.B.) and Others*, .

9. The question to be considered is whether the second order of reference made by the State Government on 18 January, 1964, was within its competence. The question as to the powers of the Government to make a reference under S. 10(1) (d) has been the subject-matter of discussion in various judicial decisions and the question therefore has not to be decided on first impression. It would therefore be of an advantage to first refer to the various decisions on which reliance has been placed by counsel for the parties. Before we proceed to deal with these decisions, it would be better to have the actual wording of the section before us :

"10. (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

* * * (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 or Third Schedule, to a tribunal for adjudication,"

10. The facts in *S.I.E.L.R. Organization v. Madras State* 1954 I L.L.J. 8 in brief are as follows : In the first order of reference certain matters were referred for the adjudication of the industrial tribunal including fixation of wages for field workers, kole maistries, factory workers and pluckers and fixation of bonus for the year 1949-50. In the second order of reference certain more matters were added. The validity of the second order of reference was challenged. It was held that the second order of reference was not concerning any matter covered by the previous reference, and therefore the second reference was not bad. Venkatarama Ayyar, J., dealing with the question at p. 16 of the report, observed :

"The last point urged is that the Government had no jurisdiction under Act 14 of 1947 to amend a reference made under S. 10 of the Act and that accordingly the memorandum dated 25 June, 1952 amending the reference made on 24 March, 1952 is without jurisdiction. The objection is one of form and is without substance. It would have been open to the Government to make under S. 10 an independent reference concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not an additional reference is a mere technicality which does not merit any interference in these proceedings."

11. In *Mangharam (J.B.) and Co. Vs. Kher (K.B.) and Others*, , the facts were : The second order of reference only added one more dispute to the disputes which had already been referred to the adjudication of the tribunal by the first order of reference. Dealing with the question the learned Judges observed :

"Under S. 10 a matter not covered by a reference can, by an independent subsequent reference, be referred to the tribunal for adjudication. If an additional reference can be made, then there is no reason why an amendment of the original reference should not be allowed."

12. In *The State of Bihar Vs. D.N. Ganguly and Others*, , the facts were : By the first notification the Government of Bihar referred an industrial dispute between the management and their 31 workmen. The dispute was whether the dismissal of the workmen in question was justified, if not, whether they were entitled to reinstatement or any other relief. By a second notification the said Government referred another industrial dispute of a similar nature in respect of 29 other workmen. While the proceedings in respect of these two references were pending before the industrial tribunal, the said Government issued a third notification. The dispute referred to in the third notification was :

"Whether the dismissal of the sixty workmen mentioned in annexure B was justified or unjustified and to what relief, if any, these workmen are entitled ?"

13. It may be stated that the order made in respect of the third reference purported to supersede the two earlier notifications to combine the said two disputes in one, to implied the two sets of workmen involved in the two said disputes together, and to add Pata Mazdoor Union to the dispute. The question

which well for their lordships consideration was whether the State Government acted within its jurisdiction in issuing the third notification. An argument on the basis of S. 21 of the General Clauses Act was advanced before their lordships that the State of Bihar had power to make notification from time to time modifying the earlier notifications. Their lordships held that it was well-settled that S. 21 embodied a rule of construction and the question whether or not S. 21 of the General Clauses Act applies to the subject-matter, context and the effect of the relevant provisions of the said statute. Their lordships then proceeded to examine the scheme of the Act. After considering the various sections their lordships at p. 639 observed :

"But once an order in writing is made by the appropriate Government referring an industrial dispute to the tribunal for adjudication under S. 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable under S. 17A. This is the effect of S. 20(3) of the Act. This provision shows that after the dispute is referred to the tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it. The appropriate Government can act in respect of a reference pending adjudication before a tribunal only under S. 10(5) of the Act which authorizes it to add other parties to the pending dispute subject to the conditions mentioned in the said provision. It would therefore be reasonable to hold that except for cases falling under S. 10(5) the appropriate Government stands outside the reference proceedings, which are under the control and jurisdiction of the tribunal itself."

14. Their lordships then held that the relevant provisions would clearly show that the scheme of the Act was inconsistent with any power of the Government to cancel a reference which had already been made and which was pending before the tribunal. Even on general principles their lordships held that the rule of construction enunciated under S. 21 of the General Clauses Act in so far as it refers to the power of rescinding and cancelling the original order of reference cannot be invoked in respect of the provisions of S. 10(1) of the Industrial Disputes Act. In this context their lordships observed at p. 641 as follows :

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

15. It is in this view of the matter that their lordships held that the aforesaid third impugned notification was without jurisdiction.

16. In Management of Thambi Motor Service, Salem Vs. Presiding Officer, Labour Court, Coimbatore and Another, , the facts are follows : In the first reference the dispute referred to was :

"What retrenchment compensation, if any, are the two concerned workman entitled to ?"

17. By the second order reference made on the representation of the labour union, the Government amended the original order of reference and referred the following dispute :

"Whether the retrenchment of the concerned workmen was justified and to what relief they are entitled and to compute the relief in terms of money if it can be so computed ?"

18. The competency of the second reference was challenged by the employer in a writ petition. The objection of the employer was upheld by the Madras High Court. At p. 566 of the report it was observed :

"I am, therefore, clearly of the opinion that the amendment effected by the reference of December, 1957 could not be given effect to unless the Government were vested with a power to cancel, modify or amend the first order of reference and as it is conceded that the Government did not have such a power, the reference in question must be held ultra vires."

19. In H. N. Chakravarty v. State AIR 1960 GAU 11, the first order of reference related of two demands :

(1) Introduction of Indian Tea Association scale of pay.

(2) If those scales of pay were not be introduced, what should be the scale of pay ?

20. In the second order of reference the aforesaid two demands were kept intact. The third item of dispute added was from what date the scale of pay fixed by the tribunal should be given effect to, and the fourth point of the dispute added was what should be the quantum of bonus for the staff for the years 1953 and 1954. It may be stated that the second notification purported to substitute second notification in place of the first. The question that arose was as to the validity of the second notification. It was held that the second reference was competent. The observations on which reliance has been placed on behalf of the respondents are at p. 14 of the report and they are in the following terms :

"What it (the second notification) has done is that by the second notification the issues which were framed by the Government for reference to the tribunal by its June, 1957 notification, have been amplified and added to. This could not, in my opinion, amount to suppression of the previous notification or cancellation of the jurisdiction of the tribunal under the first notification, which still continued to exist in that tribunal. The only difference made by the second notification was, as I have already said, that the issues of the first notification were amplified."

21. In upholding the second notification the learned Chief Justice at p. 15 observed :

"The first reference, as I have already said, contained two issues; the second one was consequential on the findings of the first issue and the first issue was whether the demand of the staff for introduction of Indian Tea Association scale of pay was justified. By the second notification, the first issue has been amplified by adding to it "other allowances and benefits"; and in the second issue also, a consequential change has been made by the introduction of the word "etc.," after the word "pay." The third issue, which did not find a place in the first notification was to the following effect :

"From what date the scale of pay, etc., fixed by the tribunal should be given effect to ?"

I am inclined to take the view that even if there had been no second reference, the matters that have been amplified or added to the first reference, are merely incidental and consequential, and the tribunal could have been justified under the provisions of Sub-clause (4) of S. 10 to give its findings on these matters."

22. As regards the additional issues for bonus, it was conceded that the State Government had the power to deal with them. In this view of the matter the learned Judges held that the second reference was with jurisdiction.

23. In *The Employers of Daily News, Secunderabad Vs. Workmen of Daily News, Secunderabad and Another*, , the first reference referred the dispute :

"Whether the termination of the services of Satyanarayana and Satya Seela are justified ? If not, to what relief they are entitled ?

24. A subsequent notification styled as an erratum was issued by the Government of Andhra Pradesh reciting that in the aforesaid item the words "termination of services" should be read as "suspension of services." The question arose whether it was competent for the Government to issue the second notification. On the facts of the case it was held that by means of the latter notification the Government only corrected an obvious terminological error and did not withdraw, cancel or revoke or supersede the first reference. It was further held that the Government could have also made an independent reference on the question of suspension. As it merely took the form of an amendment of the previous reference, it could not amount to cancellation or suppression of the first reference.

25. In *Jaipur Spinning and Weaving Mills, Ltd. v. State of Rajasthan* 1961 I L.L.J. 747, on consideration of the terms of the two references the learned Judges held that the second reference was merely an amplification of the first reference and only supplemented the first order of reference and that did not amount to supersession of the first reference. It may be stated that the first reference referred five disputes to the industrial tribunal and the second reference referred six disputes. In respect of these disputes it has been observed :

"..... the subsequent notification is not in substance a notification superseding the previous reference, but only amplifies or supplements the same. It would appear, on comparison of the points in dispute, which have been referred to in the two notifications, that the first four points are almost literally identical or substantially so. The fifth point in the first notification refers merely to relief in general which is also covered by the fourth point in the second notification; while the fifth and sixth points are supplementary points relating to the same dispute between the labourers and arise out of the alleged agreement of 27 March, 1958. Therefore, what the Government purported to have done by the virtue of this notification is merely to amend and supplement the previous notification."

26. In *State of Maharashtra Vs. Anantha Krishnan (K.) and Others*, facts were as follows : There was a dispute between the workmen and the management. The workmen wanted a reduction in the hours of work, while the management wanted that the hours of work should be increased. The appropriate Government was of the opinion that the demand of the management that hours of work should be increased should be referred to the tribunal. Instead, however, the dispute referred was whether the hours of work should be decreased. The second notification was issued in correction of the mistake. The question was whether the second notification was a valid one. This court on the facts of the case held that in view of the facts there was no cancellation of the original order of reference, as the original order of reference did not embody the decision of the Government. The second notification was therefore issued in order to correct the mistake which had been made and to give effect to the real decision of the Government. The first of reference having been made through a mistake, the Government was competent to correct it. The passage, however, on which Sri Sorabji has placed reliance is in following terms and that passage is at p. 736 of the report :

"We therefore set aside the order made by Justice Sri K. K. Desai and dismiss the original petition made by respondent 1. We hope that since the question of increase in the working hours has been referred to the industrial tribunal, Government will also consider the question of the demand made by the workers for reduction in the working hours being referred to the same tribunal, so that the tribunal may be able to consider the question of the number of working hours in all its aspects."

27. Sri Sorabji, placing reliance on these observations of this Court, argued that they clearly indicate that referring a dispute to the tribunal asking it to consider the alternative proposals put forward by the workmen and the managements does not amount to suppression or cancellation of the earlier notification. In our opinion, having regard to the facts of the said case, it is difficult to draw such a ratio from the said decision in the first instance, the observations are not made in proceeding to decide a point in dispute in the case and in that sense they are obiter. But, apart from it, the observations have been made in the context and the facts of that case and the facts as appear from the judgment are that right

from the time before the first order of reference was made there was a dispute as to what should be the hours of work. According to the workmen the hours of work should be reduced and according to the management the hours of work should be increased. The real dispute between the parties thus was as to what should be the hours of work, and it is this court only which suggested that this real dispute should be referred to the tribunal. Such however, is not the case here. Prior to the issuing of the first notification there was no dispute between the parties; the workmen alleging that the production bonus scheme in force should be liberalized and the management contending that the production bonus scheme in force should be replaced by altogether a different scheme. The reference had proceeded practically to the stage of an award on the basis that the only issue to be considered was whether the production bonus scheme which was already in force should be more liberalized or not. The aforesaid observations thus, in our opinion, have no application to the facts of the present case.

28. In *Workers employed in Thambi Motor Service Vs. Management of Thambi Motor Service and Another*, under the first order of reference the question referred to the tribunal was :

"What retrenchment compensation, if any, are the concerned workers entitled to ?"

29. The issue that was referred to the tribunal by the second order of reference, which was by way of an amendment of the original notification, was whether the retrenchment of the concerned workmen is justified and to what relief they are entitled. It was *inter alia* contended that the second order of reference was made only to correct the mistake which had occurred in issuing the first notification. The learned Judges held that there was no material on record to hold that the second notification was issued to correct any mistake. On merits the learned Judges held that the original reference proceeded on the footing that the retrenchment was valid. The subsequent order of reference referred to the validity of the retrenchment itself, which amounted to cancellation and withdrawal of the original reference, which the appropriate Government was not competent to do. At p. 499 of the report it has been observed :

"From what we have stated above it will be clear that the Government, acting under S. 10 of the Industrial Disputes Act, will have the power to add to, or amplify, a matter already referred thereunder for adjudication by the tribunal it will have no power to supersede or cancel the old reference in such a way as to effect a withdrawal from the tribunal of a dispute once validity referred to it. The question whether a notification revising the question referred is of one type or the other will depend on the construction of the relevant Government order."

30. In *Chandra Spinning and Weaving Mills Ltd., Bangalore Vs. State of Mysore and Others*, , the first notification referred three disputes to the tribunal :

(1) Whether the management was justified in dismissing 416 workmen ?

(2) Whether the workmen were entitled to be reinstated with full compensation for the entire period of involuntary unemployment ?

(3) To what relief, if any, were they entitled ?

31. In the second notification the second and the third points were kept intact. The first point in dispute was reframed as follows :

"Is the management justified in refusing work to 416 workmen specified in the schedule enclosed with effect from 26 March, 1959 and dismissing 54 workmen and discharging 41 workmen subsequently out of the 416 workmen ?"

32. The second notification issued purported to amend the points of dispute mentioned in the first notification. The question arose whether the second notification was a valid one. It was held that the points raised by the second notification termed as an amendment are different from those raised by the first reference and in effect superseded the earlier reference. In view of the facts of the case it could not be contended that the second reference was intended only to rectify the mistakes, contained in the first reference committed by the Government who did not appear to have ascertained the nature of the real dispute between the parties, and in this view of the matter the second notification was quashed. In the course of the judgment the learned Judges have considered the various decisions including the decision of their lordships of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, and also the scheme of the Act. At *Chandra Spinning and Weaving Mills Ltd., Bangalore Vs. State of Mysore and Others*, after referring to S. 15 of the Act, the learned Judges observed :

"This means that as soon as a reference is made to a labour court or tribunal of an industrial dispute, it is that Court or tribunal which is seized with the jurisdiction to adjudicate upon the points of dispute in the manner and to the extent provided for by the Act. There is no express power conferred on the State Government to interfere with the proceedings of the tribunal. It would therefore follow that the power of the State Government as could be deduced by the combined effect of S. 10(1) of the Act and S. 21 of the General Clauses Act, seems to be restricted to the making of any addition, amendment or variation of points of dispute by specifying the same in any subsequent order in such manner and on such points as would not interfere with the jurisdiction of the tribunal already vested in it on receipt of the original reference."

33. At p. 610 the learned Judges further observed :

"We might further mention that almost all the authorities cited before us have been considered exhaustively in that case and the conclusion reached is that it was not open to the Government to touch upon the jurisdiction of the tribunal determine the exact nature of the dispute by purporting to correct a mistake."

34. These are all the decisions which have been cited before us by counsel for the parties. The ratio deducible from these decisions, in our opinion, is that

through the appropriate Government has very wide powers in respect of making an order referring the disputes between the management and the workmen to the industrial court or tribunal, once certain industrial disputes have been referred to the industrial court or tribunal the matter remains exclusively within the jurisdiction of the industrial court or tribunal which is seized of the matter. The extent to which the appropriate Government could interfere in respect of the said reference being adjudication before the tribunal is only to the extent mentioned in Sub-section (5) of S. 10 of the Act, namely, adding certain parties to the reference on fulfillment of the conditions mentioned in Sub-sec (5) of S. 10. It is not open to the appropriate Government to interfere with the exercise of the jurisdiction of the industrial tribunal to deal with and adjudicate upon the disputes that had been referred to it. If the effect of the second order of references is to cause interference with the exercise of the jurisdiction of the industrial tribunal in dealing with the matters of which it is seized, then the second order in substance amounts to supersession or withdrawal of first reference and is therefore invalid in law, unless the second order of reference has been made in order to correct an obvious mistake of a terminological error which has inadvertently crept in the first order of reference. The power of the appropriate Government to refer certain other matters of industrial dispute to the industrial court or tribunal between the same parties during the pendency of reference is limited only to such matters which have not been already covered by the first order of reference or which are in the nature of merely amplifying or supplementing the matters already referred to.

35. The question now to be considered is whether in the instant case the jurisdiction of the industrial tribunal to decide the issue as to the production bonus scheme has been interfered with by the second notification. We have already stated that the contention of Sri Kulkarni on behalf of the workmen is that it causes interference, while the contention raised on behalf of the State Government as well as respondent 1 company is that it does not cause any interference. The argument on behalf of the respondents is that the power of the tribunal to grant relief in respect of the demand of the workmen that the production bonus scheme should be liberalized is in no manner taken away. It is open to the tribunal still to grant the relief prayed for by the workmen. The jurisdiction of the tribunal therefore is in no manner interfered with. The second reference is only in respect of matters connected with the industrial dispute in the first reference and is merely in amplification of the dispute referred by the first notification. Sri Setalvad argued that under S. 10(1) the appropriate Government has the power to refer to the tribunal not only a dispute but also

"any matter appearing to be connected with, or relevant to, the dispute."

36. The order of reference of 18 January, 1964 clearly shows that the State Government was of the opinion that the matter which it was referring to the industrial tribunal under this notification was a matter connected with or relevant to the dispute which had already been referred under the first notification. The

State Government was thus merely amplifying the point in dispute and not in any manner interfering with the jurisdiction of the tribunal. The dispute is as to what should be the production bonus paid to the workmen. Whether it should be under the first scheme or under the scheme proposed by Ibcon was the question which the tribunal had to consider. The scheme proposed by Ibcon cannot be said to be not associated with the said production bonus scheme which was already in force. It bears upon and is pertinent to the same subject, namely, the payment of production bonus, and it is therefore a matter connected with and relevant to the previous industrial dispute. We find it difficult to accept the argument advanced on behalf of the respondents. It is needed true that one of the meanings of the word "connect" is "associate mentally with." But there are also other shades of meaning of the word "connect" and one of the shades is "having direct relation with the principal thing." The principal matter which the tribunal had to consider was whether the scheme which was already in force should be liberalized or not. It is not in dispute that the production bonus scheme has been introduced by the employer himself some time earlier to 1956. It was in force till the year 1956. From 1956 to 1958 it was suspended and again from the year 1958 till the date of the first reference of 18 December, 1962 it was in force. The workmen wanted that it should be liberalized in the manner stated in item 3 of the schedule to the first reference. The management was not ready to accept it. The dispute on this aspect has been summarized by the tribunal in the first part of its award. At p. 650 of the gazette notification the tribunal has summarized the demand of the workmen as follows :

"On the demands relating to the production bonus the union has stated as follows. The union is not opposed to an incentive bonus scheme. The union goes on to say :

"From 1951 to 1958 the average production per month was 300 tons only. But the target had been fixed at 593 tons which is not reasonable. The percentage of 7 per cent on 500 tons for the light shop and 93 tons for heavy shop was also low. The company gets between Rs. 1,200 to Rs. 1,400 per ton from clients but pays the worker only 0.3 per cent for every five tons which is certainly low. The target and percentage as suggested by the union are most adequate.""

37. The union further wanted that the scheme should be made applicable to certain other workers also. The tribunal has further reproduced in extenso all the allegations made on behalf of the union in support its claim. It is not necessary for our purposes to reproduce them all. At p. 653 the tribunal has summarized the contentions raised on behalf of the company in the following terms :

"On the demand relating to production bonus the company has replied as follows : The existing scheme before it was introduced was fully discussed in several meetings of the worker's committee. The scheme has increased greatly the emoluments of the workmen. This fact was taken cognizance of in the award if this tribunal relating to the dearness allowance. The company denies that the target of 593 tons (500 tons for light shop and 93 tons for heavy shop) was high.

When the scheme was first introduced, the production had already reached 800 to 1,000 tons per month. The targets were unduly low. Under the scheme bonus was payable for merely reaching the target which is extremely unusual feature in any incentive scheme ... Only a small percentage of workers do not participate in the scheme."

38. It is generally on these grounds that the demands of the workmen have been opposed. It would be noticed that at no time prior to the making of the reference to the tribunal there was any dispute between the petitioners and respondent 1 as to what should be the nature of the production bonus scheme. It was common ground that the scheme in force was to govern the payment of production bonus. The only question was what should be the target and what should be the rate or percentage at which the production bonus should be paid to the workmen, and the third question was who should get the production bonus, in other words, whether some more workmen should be entitled to get production bonus or not. Now, it is clear that the second notification required the tribunal to consider whether the existing incentive scheme of production bonus be replaced by the incentive scheme evolved by Ibcons (Private), Ltd., in their report. In other words, what the second notification required the tribunal to consider is whether the scheme in existence should be replaced by altogether a different scheme. We fail to see how the second scheme could be said to be in any manner directly related to or connected with or relevant to the first reference relating to the existing scheme. It is indeed an alternative scheme altogether of a different nature and character. But, in our opinion, the alternative scheme, is not one which could be said to have any connexion as such with the first or had any relevance as such to the existing scheme. It is for this reason that we find it difficult to accept the argument of Sri Setalvad as well as Sri Sorabji that the second notification only relates to matters connected with or relevant to the existing scheme. It had also been their argument that it is not for this Court to consider whether the matter is connected with the industrial dispute or not. It is the subjective satisfaction of the State Government to decide whether the matter is connected or not. If the State Government forms that opinion, the question is not justiciable by the Court. Strong reliance is placed on the word "appearing" in Clause (d) of Sub-section (1) of S. 10. We had also been referred to a decision of the lordships in *State of Madras Vs. C.P. Sarathy and Another*, . It is not possible for us to accept the argument. It is indeed true that the formation of the opinion by the appropriate Government that an industrial dispute exists is left to the satisfaction of the appropriate Government and the scheme of the Act is that if the appropriate Government considers that an industrial dispute exists and makes a reference in respect thereof, it is not open to the Court to consider whether the dispute in fact exists or not. But Cls. (a) to (d) of Sub-section (1) of S. 10 only relate to the nature of the order which the appropriate Government could make on formation of the opinion. The subject-matter dealt with in Cls. (a) to (d) is the scope and ambit of the appropriate Government's power in making the order, after the formation of the opinion that an industrial dispute exists, and

the power that is conferred by Clause (d) on the formation of the opinion that an industrial dispute exists is not confined only to the dispute itself, but the power conferred by Clause (d) is that after the formation of the opinion the State Government could not only refer the industrial dispute but also matters appearing to be connected with or relevant to the dispute. It is true that the matter which is referred should be one which to the appropriate Government appears to be connected with the industrial dispute. But that does not mean that it is entirely to the subjective satisfaction of the State Government to decide whether the other matter is connected with the industrial dispute or not. What the industrial dispute is has to be stated in the notification itself and whether the other matters appear to be connected with it or not has to be objectively proved if challenged. Assuming, however, that we are not correct in our conclusion that it is not left to the subjective satisfaction of the appropriate Government as to whether a particular matter is connected with the industrial dispute or not, still, in our opinion it would be open to the party to say that in the formation of the opinion that a particular matter is connected with the dispute, the State Government has considered matters extraneous to the decision of the issue or matters not relevant to the decision of the issue. Even approaching the question from that angle, in our opinion, the question which the appropriate Government has to consider is, is this particular matter in any manner connected with the dispute which it had already referred. What an industrial dispute has been defined under S. 2(k) of the Act and it is the following terms :

""industrial dispute" means any dispute or difference between the employers and employees or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any persons."

39. It is to be seen that there has to be a dispute or difference between the employer and employee on any matter, which is in some manner or another connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. We have already pointed out and reproduced to a certain extent from the award of the tribunal that the only point in dispute was whether the existing scheme should be more liberalized or not, and that was the dispute which had been referred by the first notification to the tribunal and in making an order under S. 10(1) the question which the appropriate Government had to consider is whether the matter it was referring to was in any manner connected with that dispute and not any dispute. As we have already stated. There was no dispute at all when the first reference was made as to what should be the scheme of production bonus. If that be the true position, in formation of the opinion that the alternative scheme was a matter connected with the industrial dispute which was referred, the appropriate Government obviously appears to be considering matters extraneous to the issue which it had to consider or was taking into account matters not relevant to the consideration of the dispute. The decision on which reliance has been placed does not take the matter to the extent Sri Setalvad wants us to go, namely, holding that whether a

particular matter appears to be connected with the industrial dispute or not is left to the subjective satisfaction of the appropriate Government. All that has been stated there is that the formation of the opinion as to whether an industrial dispute exists or not is left to the subjective satisfaction of the appropriate Government. It is indeed true that in the event the tribunal comes to the conclusion that the scheme prepared by Ibcon should not be accepted, it would be open to the tribunal to adjudicate upon the demand made by the petitioners that the existing bonus scheme should be liberalized. To that extent indeed the jurisdiction of the tribunal to decide the question is not taken away by the second notification. But what has to be considered is whether the jurisdiction of the tribunal to deal with that dispute and give its award thereon is in any manner interfered with and not whether the jurisdiction of the tribunal to deal with the question in any eventuality is completely taken away. The second notification in our opinion, interferes with the jurisdiction of the tribunal in dealing with the said dispute referred to it under the first order of reference. Under the first reference, the tribunal had jurisdiction to straightaway consider whether the demand of the workmen in respect of the production bonus scheme should be allowed or not. Now the result of the second notification is that the exercise of that jurisdiction has been conditioned or made dependent on the decision of altogether a different question, namely, whether an alternative scheme proposed by respondent 1 should be introduced or not. The tribunal thus is required first to consider the issue whether the scheme proposed by Ibcons should be made applicable or the existing production bonus scheme should be continued. It is after considering this issue and only in the event the tribunal coming to a conclusion that the Ibcons scheme should not be introduced that the tribunal would be entitled to proceed and decide the demand of the workmen. It is in this sense that there is an interference with the jurisdiction of the tribunal to deal with the industrial dispute referred to it, and that, in our opinion, amounts in substance to the withdrawal of the first reference so far as it relates to the production bonus scheme. It has also been pointed out to us by Sri Kulkarni that virtually would amount to the withdrawal of the first reference in its entirety, inasmuch as the other demands, namely, of wage-scales dearness allowance, etc., of the workmen have been considered by the tribunal on the background that the petitioners are entitled to the production bonus under the existing scheme and if this production bonus scheme goes, the first award itself will be meaningless. It is not necessary for us to consider this aspect of the matter in this case, inasmuch as we have already held that the second notification results in the withdrawal of the reference on the third item, namely, production bonus scheme, and is therefore void. The petition, therefore, will have to be allowed.

40. Before we part with the case it is necessary to state that Sri Setalvad had brought to our notice that the petitioners had nowhere alleged in the petition that the second notification was not in any manner connected with the first notification nor have the petitioners challenged the second notification on the ground that the observations made in the second notification that in the opinion

of the State Government the subject-matter of the second reference was connected with or relevant to the dispute which had already been referred, were in any manner vitiated and we therefore must proceed on the assumption that the subject-matter of second notification is a matter connected with the industrial dispute referred to by the first notification. In our opinion, the question is one of construction of the notification in the light of the facts of the present case and it is a pure question of law and for this purpose it is immaterial whether any specific pleas in this respect has been raised by the petitioners or not.

41. In the result, the rule is made absolute. The notification of 18 January, 1964 is quashed. So also the order made by the tribunal of date 17 April, 1964 is quashed.

42. The respondents to pay the costs to the petitioners.