
(2017) 04 GUJ CK 0133
In the Gujarat High Court
Case No : 3893, 2259 and 3894 of 2006

Kantibhai G. Patel

APPELLANT

Vs

Government of India & others

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Constitution of India, Article 14, Article 226, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs - Dissolution of a District or a Regional Council
Industrial Disputes Act, 1947, Section 10(1), Section 10(5), Section 10(1)(d) - Reference of disputes to Boards, Courts or Tribunals - Reference of disputes to Boards, Courts or Tribunals - Reference of disputes to Boards, Courts or Tribunals

Citation : (2017) 04 GUJ CK 0133

Hon'ble Judges : Sonia Gokani

Bench : Single Bench

Advocate : Sangeeta N. Pahwa, Saurabh G. Amin, PS Joshi, Trivedi & Gupta

Judgement

1. Since, all these matters involve common question of facts and law, they are heard together and being disposed of by this common judgment. 2. The petitioners have challenged the order of Respondent No.1-Government of India dated 21.10.2005 rejecting to refer the dispute to the industrial adjudicator. 3. The facts are drawn from Special Civil Application No. 3893 of 2006. 3.1 The services of the petitioners came to be terminated without following the due procedure on 08.06.1983. He was working with Respondent No.3. His duty was to take reading and to make entry in the book given by Respondent No.3. It is the case of the petitioner that he is an employee of the Respondent No.3 but he was being engaged through broker/contractor. He therefore approached Respondent No.4, herein, to refer the dispute of termination in violation of Industrial Disputes Act, 1947 (for short, "the ID Act") on 11.06.1983. No action was taken on the request of the petitioner. 3.2 In the meantime, it is his say that

on 22.09.1997 similarly situated persons who were working under respondent No.3 through the broker/contractor came to be reinstated by way of a settlement. Therefore, the petitioner once again approached Respondent No.4 to refer the dispute to the appropriate authority. On 09.08.2000, he was informed by Respondent No.4 to approach the appropriate government, in case of the present petitioner such authority is the Central Government, Respondent No.1.

3.3 The petitioner communicated on 11.01.2005 to Respondent No.1 raising a demand for reinstatement and back wages. Respondent No.1 refused to refer the dispute on the ground that there does not exist any employer-employee relationship vide its order dated 21.10.2005. 3.4 It is the grievance of the petitioner that Respondent No.1 failed to appreciate that it is an administrative authority and therefore the adjudication on the issue of employer-employee relationship or any such legal issue was not permissible under the law and it could not have gone into the merits of the matter. The petitioner is therefore before this Court seeking following reliefs: "8. ... (A) YOUR LORDSHIPS be pleased to issue appropriate writ, order or direction and may be pleased to quash the order dated 21.10.2005 passed by respondent no.1 inter alia rejecting to refer the dispute as being illegal, arbitrary and violative of Article 14 & 16 of Constitution of India and further be pleased to direct the respondent no.1 to refer the dispute to appropriate adjudicating authority in the interest of justice; (B) YOUR LORDSHIPS be pleased to direct the respondent no.1 to refer the dispute to appropriate adjudicating authority, pending the admission, hearing and final disposal of this petition; (C) ..."

4. There is no affidavit-in-reply filed by any of the respondents. 5. This Court has heard at length learned Advocate, Mr. Thakkar, for the petitioners in all the three petitions, learned Advocate, Mr. Joshi, for Respondent No.3, learned AGP, Mr. Wadhwa, for Respondent No.4 and learned Advocate, Mr. Amin, for Respondent Nos. 1 and 2. 6. Learned Advocate for the petitioners, Mr. Thakkar, has elaborately made his submissions to the Court submitted that the Central Government ought not to have adjudicated upon the dispute as to whether there exists employer-employee relationship or not. This was the question which needed Reference to the Labour Court and the same could not have been decided without reference. He has urged that the said issue is no longer res integra and has been decided by the Apex Court rendered in "Telco Convoy Drivers Mazdoor Sangh and Another v. State Of Bihar", (1989) 3 SCC 271. He has also sought to rely on the decision referred in "M/s. Rahman Industries Pvt. Ltd. v. State of U.P. and Others", reported in AIR 2016 SC 551. He further urged that the High Courts in exceptional circumstances can directly make a reference to the industrial adjudicator instead of routing it through the Central Government and otherwise industrial Court is to direct the Court. 7. Learned Advocate, Mr. Joshi, appearing for Respondent No.3 has vehemently submitted that the approach of the petitioners to the Respondent No.4 was at belated stage, i.e. for a matter of the year 2000, he approached in the year 2005. There is no explanation for the delayed approach if one goes even by the year 2003. He urged that therefore the Central Government may not mechanically refer the dispute to the Labour Court. He has sought to rely on the

decision in "Nedungadi Bank Ltd. v. K.P. Madhavankutty and Others", (2000) 2 SCC 455. 8. Learned Standing Counsel, Mr. Amin, appearing for Respondent Nos. 1 and 2 urged that the Central Government in the event of the Court directing the Respondent Nos. 1 and 2 to consider the request of the petitioners, shall consider the issues within the prescribed time-frame. He urged that order of the Central Government though is administrative in nature, it has discretion and did not dispute that the same is not been the pale of. 9. Learned AGP, Mr. Wadhwa, appearing for Respondent No.4 has urged that bearing in mind the facts and circumstances, Respondent No.4 had chosen not to refer the dispute to the Labour Court. 10. Before this Court adverts to the facts in the instant case, the law on the subject deserves consideration. 10.1 Division Bench of this Court in Letters Patent Appeal No. 1072 of 2010 was considering the question whether the request of the Union to pass an order under Section 10(5) of the ID Act was not entertained. This refusal to refer the dispute for adjudication was matter of controversy before this Court. Division Bench dealt with the law on the subject at length to conclude that the order passed by the Labour Court refusing to refer the dispute to the adjudicating authority was not sustainable. It also gave directions to the concerned authorities. Apposite it would be to refer to the relevant findings and observations: "6.2 In the case of M/s. Hochtief Gammon (supra), the Apex Court in paras 8 & 9 has observed as under: "8. Apparently taking the cue from the observations of this Court the appellant filed a writ petition out of which this appeal arises. But before doing so the appellant had filed an application before the State Government asking them to modify the earlier reference to the Industrial Tribunal by adding the company as a party to the reference and an additional clause as under: "If bonus is payable, who is the employer and who is responsible for payment of the bonus to the workmen?" They pointed out in that application that the company was entirely responsible for payment of wages and connected payments and all other remuneration of any kind to the workmen, that for enabling the appellant to make payments to the labourers engaged for such work on behalf of the company an imprest of Rs. 3,000,000/- was given to them out of which the payments were made, that the appellant got only a fee, that if any bonus becomes payable it was the person who pays wages that has to pay the bonus. Thereafter they also asked for a personal hearing. To this the reply of the Government was as follows: With reference to their petition dated 20-5-64 on the above subject, the undersigned is directed to say that after due. Consideration of the matter the Government do not find any materials on the basis of the petition to include Hindustan Steel Ltd., Rourkela as a party in the above case. It would be noticed that in the petition the appellant wanted not only that the company should be made a party but also that another issue must be referred to the Tribunal for adjudication. They had given reasons as to why the company should be included as a party. They had in their petition included the paragraph which we have extracted above from this Court's judgment. It is apparent from their reply that the Government had not applied their mind to the facts placed before them. There was at least an arguable case on the point as to who was liable to pay the bonus and in that case

the company would have been a necessary and appropriate party. Even if the Government thought that the company was not a necessary party the question as to who was liable to pay the bonus was a very relevant question and that made the company a necessary or at least a proper party. The attitude of the appellant had throughout been that their contract was a cost contract, that the company had to pay labour and while they have employed the workmen the employer was really the company. That contention may or may not be upheld by the Tribunal. Ultimately if the Tribunal should hold that the appellant is the party responsible for payment of bonus the question as between the company on the one hand and appellant on the other may have to be decided by arbitration as provided in the contract between them or otherwise. It appears to us, therefore, that not only was this an appropriate question to be referred to the Industrial Tribunal for adjudication but even the company should be interested in getting itself impleaded as a party so as to put forward any contention which it may decide to put forward as regards the question whether bonus was payable and if so the quantum thereof, as also the question as to who would be liable to pay the bonus instead of adopting, as we have said earlier, an ostrich like policy.

9. The power of the Courts in relation to the orders of the appropriate Government in the matter of referring industrial disputes for adjudication is no longer in doubt. In *State of Bombay v. K.P. Krishnan & Ors.* "It is common ground that a writ of mandamus would lie against the Government if the order passed by it under section 10 (1) is for instance contrary to the provisions of section 10(1) (a) to (d) in the matter of selecting the appropriate authority; it is also common ground that in refusing to make a reference under section 12(S) if Government does not record and communicate to the parties concerned its reasons therefore a writ of mandamus would lie. Similarly it is not disputed that if a party can show that the refusal to refer a dispute has not bona fide or is based on a consideration of wholly irrelevant facts and circuit of mandamus would lie. The order passed by the Government under section 12(5) may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the court hearing a petition for mandamus is not sitting in appeal over the decision of the Government; nevertheless if the court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the court can Issue, and would be justified in issuing, a writ of mandamus even in respect of such an administrative order." In *Bombay Union of Journalists v. The State of Bombay* it was observed: "The breach of section 25F is no doubt a serious matter and normally the appropriate Government would refer a dispute of this kind for industrial adjudication; but the provision contained in section 10(1) read with section 12(5) clearly shows that even where a breach of section 25F is alleged, the appropriate Government may have to consider the expediency of making a reference and if after considering all the relevant facts the appropriate Government comes to the conclusion that it would be inexpedient to make the reference, it would be competent to it to refuse to make such a

reference.. If the appropriate Government refuses to make a reference for irrelevant considerations, or on extraneous grounds, or acts malafide, that, of course, would be another matter: in such a case a party would be entitled to move the High Court for a writ of mandamus. 6.3 In the case of *Ram Avtar Sharma and Others v. State of Haryana* (supra), the Apex Court has held as under: "7. Now if the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of its. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justices or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In *State of Bombay v. K. P. Krishnan and Ors.* it was held that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) is based or induced by reasons as given by the Government are extraneous, irrelevant and not germane to the determination. In Such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy. 8. Accordingly, it is necessary to examine the reasons given by the Government to ascertain whether the determination of the Government was based on relevant considerations or irrelevant, extraneous or considerations not germane to the determination. 9. Re: Writ Petition Nos. 16226- 29/84: The reasons assigned by the Government for refusing to make a reference are to be called out from the letter Annexure 'A' dated September 1, 1984 sent by the Joint Secretary, Haryana Government, Labour Department to the petitioners It is stated in the letter that: "the Govt. does not consider your case to be fit for reference for adjudication, to the Tribunal as it has been learnt that your services were terminated only after charges against you were proved in a domestic enquiry." The assumption underlying the reasons assigned by the Government are that the enquiry was consistent with the rules and the standing orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last aspect has assumed considerable importance after the introduction of Section 11A in the Industrial disputes Act by Industrial Disputes (Amendment) Act, 1971 with effect from December 15, 1971. It confers power on the Tribunal not only to examine

the order of discharge or dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Section 11A confers power on the Tribunal Labour Court to examine the case of the workmen whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi judicial determination was required to examine bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference under Section 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2A of the Act denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workmen and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Section 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved there would be entitled to move the Court for a writ of mandamus. (See *Bombay Union of Journalists & Ors. v. The State of Bombay & Anr.* It is equally well settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out. 10. Writ Petition No. 16418/84: The appropriate Government being the Central Government in this case declined to make a reference as per its order dated December 9, 1983 in which it is stated that "the action of the management in imposing on the workmen penalty of removal from service on the basis of an enquiry and in accordance with the procedure laid down in the Railway Servants (Discipline & Appeal) Rules, 1968 is neither malafide nor unjustified. The appropriate Government does not consider it necessary to refer the dispute to the industrial Tribunal for adjudication." Ex facie it would appear that the Government acted on extraneous and irrelevant considerations and the reasons here in before mentioned will mutatis mutandis apply in respect of present order of the Government under challenge. Therefore for the same reasons, a writ of mandamus must be issued. 11. Accordingly all the writ petitions are allowed and the rule is made absolute in each case. Let a

writ of mandamus be issued directing the appropriate Government in each case namely the State of Haryana in the first mentioned group of petitions and the Central Government in the second petition to reconsider its decision and to exercise power under Section 10 on relevant and considerations germane to the decision. In other words, a clear case of reference under Section 10(1) in each case is made out. We order accordingly." 6.4 Similarly in the case of Telco Convoy Drivers Mazdoor Sangh (supra) the Apex Court in paras 16 & 17 observed as under: "16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference under section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See *Sankari Cement Alai Thozhilalar Munnetra Sangam v. Government of Tamil Nadu*, [1983] 1 LLJ 460; *Ram Avtar Sharma v. State of Haryana*, [1985] 3 SCR 686; *M.P. Irrigation Karamchari Sangh v. The State of M.P.* [1985] 2 SCR 1019 and *Nirmal Singh v. State of Punjab*, 17. In the circumstances, we direct the State of Bihar to make a reference under section 10(1) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the General Manager TELCO (Annexure R-4/1 to the Special Leave Petition), to an appropriate Industrial Tribunal within one month from today." 6.5 In the case of *Rashtriya Chemicals & Fertilizers Ltd. and another* (supra), the Apex Court has observed as under: "8. It is now well settled that High Courts will not straightway direct the appropriate government to refer the dispute. It is for the appropriate government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute. We may refer to the following observations of this Court in *Steel Authority of India Ltd. v. Union of India & Ors.* [(Second SAIL Case) (2006(3) CLR 659)]: "For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and/or management, as the case may be. While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(d) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The state exercises administrative power both in relation to abolition of contract labour in terms of section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to labour court or a Tribunal under Section

10(1)(d) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the state must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court." We would, however, hasten to add that this judgment shall not come in the way of the appropriate government to apply its mind for the purpose of issuance of a notification under Section 10 of the 1970 Act. 9. The exception to the above is, when the Court finds that the appropriate government refuses to make a reference of a dispute is unjustified. In such circumstances, the court may direct the government to make a reference *Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu v. Government of Tamil Nadu and Anr.* (1983 (1) SCC 304), *V. Veerarajan and Ors. v. Government of Tamil and Ors.* (1987 (1) SCC 479 and *Telco Convoy Drivers Mazdoor Sangh and Anr. v. State of Bihar & Ors.* 10. The Circular dated 8.11.2000 of the Central Government which was the subject matter of challenge in the first matter is extracted below: "I am directed to invite your kind attention to the above cited subject and to say that the matter relating to the prohibition of employment of contract labour in the establishment of Rashtriya Chemicals and Fertilizers Ltd., in their plants at Chembur, Mumbai and Thal District Raigad, Maharashtra was discussed in the 44 Meeting of the Central Advisory Contract Labour Board held on 6-7th April, 2000 under the Chairmanship of Shri T.S. Shankaran. The Board made the following recommendations to the Government: "The Board observed that the Committee has examined in detail the issue with respect to the factors set out in Section 10 of the Act before coming to its conclusion. The Board, therefore, decided to accept the recommendations of the Committee and recommended to the Government accordingly" 2. In pursuance of the recommendations of the Board, the matter has been considered in detail by the Central Government and it has been decided not to prohibit employment of contract labour in the following work/jobs in the establishment of Rashtriya Chemicals and Fertilizers Ltd., in their plants at Chembur, Mumbai and Thal District Raigad, Maharashtra for which the appropriate government, under the Contract Labour (Regulation and Abolition) Act, 1970 is the Central Government: (1) Cleaning of Roads, Storm drains, Yards and Grass cutting. (2) Dosing of Chemicals. (3) Jobs in Canteen. (4) Maintenance of Railway Track in the Plant. (5) Material handling and (6) Civil Engineering maintenance i.e., in the jobs of carpentry, masonry, repairs to electrical switchgear and equipment such as pumps, cutters, maintenance operators, maintenance helpers, Assistants in Civil work, operators and general workers. 3. As the question of interpretation of the term "establishments" and applicability of the Act to township is pending before the Constitution Bench of the Supreme Court and their ruling is awaited, it has been decided not to prohibit the employment of contract labour in the job of Security Guards covered by the Maharashtra Private Security Guards (Regulation

of Employment and Welfare) Act, 1981, deployed in the colonies, at present. 4. A notification prohibiting employment of contract labour in some other jobs/works in the establishment of Rashtriya Chemicals and Fertilizers Limited, in their plants at Chembur, Mumbai Priyadarshini Complex and Thal District Raigad, Maharashtra is being issued separately in consultation with the Ministry of Law, Justice and Company Affairs (Legislative Department). 5. The employment of contract labour in the loading and unloading jobs being done by the Hathadi Workers are being referred back to the Board for their elucidation." 12. It is open to the respondent No.1-Association, if it is so advised, to move the appropriate State Government seeking reference of the purported dispute to the Tribunal. It is for the State Government to consider whether any reference is called for. We make it clear that we have not expressed any opinion on the desirability or otherwise of making reference." 6.6 Reliance has also been placed by the appellant on the case of Sarva Shramik Sangh (supra), wherein the Apex Court has held as under: "37. Thus it can safely be concluded that a writ of mandamus would be issued to the appropriate government to reconsider the refusal to make a reference, where (i) the refusal is on irrelevant, irrational or extraneous grounds; (ii) the refusal is a result of the appropriate government examining the merits of the dispute and prejudging/adjudicating/determine the dispute; (iii) the refusal is mala fide or dishonest or actuated by malice; (iv) the refusal ignores the material available in the failure report of the Conciliation Officer or is not supported by any reason. 38. This case is squarely covered by the decisions in Ram Avtar Sharma and Telco Convoy Drivers Mazdoor Sangh. The state government has examined the merits of the dispute and has refused to make the reference on the ground that the workers were not the employees of IOC, when the very dispute that required reference was whether the workers should be considered as the employees of IOC. 39. In view of the above we allow this appeal and direct the Central Government to reconsider the matter in the light of the observations above and take an appropriate decision on the request for reference of the dispute to the Industrial adjudicator. 40. As and when the state government makes the reference, it is for the Industrial Tribunal to consider the dispute on merits, on the basis of materials placed before it, uninfluenced by the observations of the High Court or this Court. 7. Considering the above view of the matter, we are of the opinion that the learned Single Judge ought to have quashed and set aside the impugned orders and ought to have directed the appropriate authority to consider the case qua respondents no. 3 to 5. The observations made by learned Single Judge are not required to be disturbed but the error committed by the learned Single Judge is required to be rectified. No appeal has been preferred against the observations made by learned Single Judge by the respondents. 8. So far as the contention of the respondents that the appeal has become infructuous is concerned, we are of the opinion that the same is not subject matter of writ petition but nevertheless while referring the dispute to the competent authority, the authority shall bear in mind that the said reference is pending. Therefore, while deciding the application the competent authority shall consider the finality achieved in the award. In that view of the

matter, it shall not be appropriate for this Court to enter into the merits of the matter with regard to the fact that whether the appeal has become infructuous or not, we make it clear that the newly added party shall not be made party to the original reference which was referred in view of the finality achieved. In view of the several attempts which were made by the appellant it shall not be appropriate at this stage to revive the reference which has achieved finality."

10.2 In "M/S. Rahman Industries Pvt. Ltd. v. State of U.P. and Others"(Supra), the challenge before the Apex Court was to the award passed under the provisions of the Timely Payment of Wages Act, 1978, and recovery before the High Court leading to the challenge to the impugned judgment being impugned before the Apex Court. The grievance of the appellant before the Apex Court was that there was peremptorily a direction by the High Court to refer the dispute raised by the workmen for adjudication virtually taking away the discretion on the part of the Government to look into the issue as to whether there is a referable dispute at all or not. The Apex Court set aside the impugned order to the extent that there is a mandatory direction for referring the issues raised by the workman for adjudication and it clarified that the appropriate government must examine whether a dispute exists or not and in case it is so satisfied it should refer the same for adjudication. The relevant observations and findings of the Apex Court reads thus: "4. We find force in the submission made by the learned Counsel. In the scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication. No doubt, the Government is not entitled to enter a finding on the merits of the case and decline reference. The Government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication. Only in case, on judicial scrutiny, the court finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors, the court may issue a direction to the Government to make a reference. 5. The jurisdiction of the Government under the scheme of the Act to satisfy itself as to the existence of the dispute has been the subject matter of catena of judgments of this Court, some of which have been referred to in Steel Authority of India v. Union of India, wherein it has been held at paragraph-18, which reads as follows: "18. Before advertng to the questions raised before us, we may at this juncture notice the contention of Mr V.N. Raghupathy that whereas in the reference only 26 workmen were made parties, more than 600 workmen were made parties in the writ petition and, thus, only because before the appropriate Government a demand was raised by some of the workmen contending that they were workmen of the contractors, an industrial dispute could be raised that the contract was a sham one and in truth and substance the workmen were employed by the management." 6. In Rashtriya Chemicals and Fertilizers Limited and another v. General Employees" Association and others, following Steel Authority of India (supra), it has been held at paragraph- 8 that ... "It is for the appropriate

Government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute. ...". 7. In *Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar and others*, it has been held that on judicial review, if the court finds that the appropriate Government was not justified in not making a reference, the court may issue a positive direction to make a reference. 8. This Court, in *Sarva Shramik Sangh v. Indian Oil Corporation Limited*, has cited almost all the previous decisions on this point with approval. 9. The High Court has, in the impugned order, denied the jurisdiction vested in the Government in the scheme of the Act to examine a case for the purpose of satisfying itself as to whether there exists a dispute for referring to the Labour Court/Industrial Tribunal for adjudication. The High Court has issued a mandatory direction in the very first instance to refer the dispute, if any, raised by the workmen for adjudication before the Labour Court. That is against the scheme of the Act as we have seen from the legal position settled by this Court." 10.3 It is also necessary at this stage to refer to the decision of the Apex Court in "*Rashtriya Chemicals & Fertilizers Ltd. and another v. General Employees Association*", (2007) 5 SCC 273 wherein it has been categorically held by the Apex Court that if the Court finds that the appropriate Government has refused to make a reference of the dispute raised is unjustified, the Court may direct the government to make a reference. Profitable here it would be to reproduce relevant observations: "In the judgment of this Court delivered a few days ago, *M Mahabir Jute Mills Ltd. Gorakhpore v. Shri Shibban Lal Saxena* (judgment dated July 30, 1975), it has been held on a consideration of the provisions of law contained in Section 4K of the Act that after quashing the order of the Government refusing to make a reference the High Court could ask the Government to reconsider the matter but it could not give peremptory directions to make a reference. We may, however, take note of a sentence occurring in the judgment of this Court the case of *Bombay Union of Journalists* (supra) at page 35 which reads thus: "if the appropriate Government refuse to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move Court for a writ of mandamus." We think what was meant to be conveyed by the sentence aforesaid was that the party would be entitled to move the High Court for interfering with the order of the Government and not necessarily for the issuance of a writ of mandamus to direct the Government to make reference. The mandamus would be to reconsider the matter. It does not seem to be quite reasonable to take the view that after the refusal of the Government to make a reference is quashed a writ of mandamus to make a reference must necessarily follow. The matter has still to be left for the exercise of the power by the Government on relevant considerations in the light of the judgment quashing the order of refusal" "It is now well settled that High Courts will not straightway direct the appropriate government to refer the dispute. It is for the appropriate government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute. We may refer to the following observations of this Court in *Steel Authority of India Ltd. v. Union of*

India & Ors. [(Second SAIL Case) (2006(3) CLR 659)]: "For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and/or management, as the case may be. While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(d) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The state exercises administrative power both in relation to abolition of contract labour in terms of section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to labour court or a Tribunal under Section 10(1)(d) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the state must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court. We would, however, hasten to add that this judgment shall not come in the way of the appropriate government to apply its mind for the purpose of issuance of a notification under Section 10 of the 1970 Act." The exception to the above is, when the Court finds that the appropriate government refuses to make a reference of a dispute is unjustified. In such circumstances, the court may direct the government to make a reference ..."

10.4 The law thus is quite well laid down that the act of the government to refer the dispute is administrative in nature and yet not beyond the pace of judicial review, while exercising such powers it is not expected to decide judicially. When challenged before the court of law, it is thus quite apparent from discussion above that the High Court is not to direct State/Central Government to refer any dispute to the concerned labour court/tribunal except in very exceptional circumstances. Wherever the Court/Tribunal has refused to make a reference either by ignoring relevant material or for examining the matter on merits or based on the irrelevant grounds or irrational or refusal is not bona fide or genuine.

11. Reverting back to the facts of the instant case, the services of the petitioners came to be terminated in the year 1983. It is their case that though, they were employees of Respondent No.3 they were engaged through contractor to avoid the relationship of employer employee by Respondent No.3. They therefore had made a request to Respondent No.4 to refer the dispute of termination by approaching it on 11.06.1983. However no action was taken and later when similarly situated persons were reinstated by way of settlement they once again had approached Respondent No.4 for such a reference and the said authority vide its order dated 11.06.2005 raised demand and Respondent No.1 rejected to refer the dispute on the ground that there did not exist any employer-employee relationship. As is held by the Apex Court in

the decisions referred herein above, when the appropriate government is approached under Section 10(1) of the ID Act, it acts on administrative side and it does not act on quasi-judicial or judicial side and therefore it cannot delve into the merits of the matter and take upon itself to hold that no such lis exists. If the judicial powers are exercised then it would be in excess of the powers conferred upon it under Section 10 of the ID Act. While considering the question of making a reference under Section 10 of the ID Act, it is entitled to examine whether an industrial dispute exists or not but not to adjudicate the matter on merit itself. The question whether the appellants were workmen or not cannot be decided by the Government in exercise of its administrative powers even under Section 10(1) of the Act. Under the circumstances, the government's refusal to refer the dispute on the ground that the appellants were not the workmen is liable to be set aside. 12. In the instant case, the dispute raised by the petitioner is to the effect that he was an employee of Respondent No.3 and therefore he made a request for referring the matter to the appropriate authority for adjudication but Respondent Nos. 1 and 2 chose delve into the merits of the matter and took upon itself on administrative side to adjudicate on that issue which surely is an act in excess of the powers conferred under Section 10 of the ID Act. 13. The Apex Court in the case of "V. Veerarajan and others v. Government of Tamil Nadu and others", (1987) 1 SCC 479, was considering the question in a dispute arisen out of termination of services of workmen. The Apex Court held that the government cannot refuse to make reference on the basis of its opinion that the domestic inquiry was in conformity with the principles of natural justice and that the punishment of termination of services was proportionate to the gravity of the offence. The Apex Court held that the stand of the government that it was not a fit case for adjudication both on expediency and on merits and the grounds were also irrelevant and not germane for the purpose of deciding as to whether the dispute raised by the workmen should be referred to industrial adjudication is not sustainable. Since it was found to be a fit case for reference, the Apex Court directly directed the government to refer the dispute for adjudication to the Labour Court. 14. This being the case where the authority concerned has acted beyond its scope and despite the existence of material, it refused to refer the matter for adjudication, this Court is of the opinion that the order deserves to be quashed and set aside. 14.1 No grounds exist for this Court to direct the reference straightaway bypassing the regular authority of the state or the central government. 15. In the instant case, it is also alleged that after about 22 years, the dispute is raised and therefore, there is no reason why it should be remanded back to the concerned government for reconsideration. 15.1 Necessary it would be to refer to the contention of the learned Advocate, Mr. Joshi, which he has based on the decision of the Apex Court in "Nedungadi Bank Ltd. v. K.P. Madhavankutty and others" (Supra) and urged that the law does not prescribe any time-limit for any appropriate government under Section 10 of the ID Act but the power has to be exercised in reasonable and rationale manner. According to him, in the matter before the Apex Court was objection to the seven years of stale dispute sought to be referred to under Section 10 of the ID Act and

time lag is quite huge. The relevant findings and observations can be reproduced at this stage for better appreciation: "6. Law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act It is not that this power can be exercised at any point of time and to revive matters which had since been settled Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time When the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent." 16. As it is quite eloquent from the findings and observations that it is for the concerned authority to consider as to whether a dispute can be said to be a stale based on the facts and circumstances of each case. Therefore at this stage to deny the reference only on this ground is also not acceptable. The authority concerned can look into that aspect along with the other details. 17. Resultantly these petitions are PARTLY ALLOWED. The order impugned passed by Respondent No.1-Government of India dated 21.10.2005 refusing to refer the dispute to the Tribunal is QUASHED and set aside. 17.1 The matters are remanded to the competent authority being Respondent Nos. 1 and 2 who shall examine the matter whether a dispute exists or not on availing opportunities to both the sides and on examining at the touchstone of well laid down principles and if it is satisfied, it shall refer the same for adjudication to the competent authority. 17.2 Such exercise shall be completed within a period of THREE MONTHS from the date of receipt of a copy of this order. The parties shall be at liberty to raise all the contentions before the authority concerned which shall decide all the aspects including the issue of alleged stale claim. This Court has not gone into the merits of the matter. No order as to costs. Rule is made absolute in each matter, accordingly.