

(2006) 12 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 4834 of 2006

Lokmat Newspapers Pvt. Ltd.

APPELLANT

Vs

Additional Labour Commissioner and Others

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 3, 4, 6
Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 2, 25F
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 59

Citation : (2006) 12 BOM CK 0001

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : P.C. Marpakwar, for the Appellant; Asstt. Government Pleader for Respondent Nos. 1, 3 and 4 and S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Challenge in this Writ Petition is to the order dated 3-4-2006 passed by Industrial Court/Tribunal, Nagpur in Reference No. (IT) 1 of 2006 as also to the order dated 1-2-2006 issued by respondent No. 1 Additional Labour Commissioner u/s 12(5) of Industrial Disputes Act, 1947 referring the dispute raised by respondent No. 2 Trade Union to respondent No. 4 Industrial Tribunal. The objection raised by present petitioner/employer about validity of reference made and seeking its return has been rejected by Industrial Tribunal on 3-4-2006. The respondent No. 2 had filed application seeking interim relief of protection of status and service conditions of concerned employees before Industrial Tribunal and that also has been rejected by very same order. Accordingly respondent No. 2 trade union has filed Writ Petition 4073/2006 challenging said rejection. Both these petitions were listed together but then at the request of parties present writ petition has been taken up for consideration first and the other is kept pending. Considering the nature of controversy, petition has been heard finally at the stage of admission itself. Accordingly Rule

made returnable forthwith and heard finally by consent.

2. The order of reference dated 1-2-2006 after mentioning the formal facts in schedule states the dispute referred as under:

Schedule.

Following 19 employees should be made permanent.

Then the names of these 19 employees are mentioned. In the formal part there is absolutely nothing about the nature of dispute raised or the facts and circumstances in which the reference came to be made to Industrial Tribunal. After this reference Trade Union filed statement of claim in support thereof on 18th March, 2006 and on same day they also moved application for grant of interim relief to protect services and position of concerned employee members listed at serial number 2 to 8, i.e. total 7 employees. The employer filed reply opposing the statement of claim on 27th March, 2006. On the 29-3-2006 employer also moved application for return of reference and on 31-3-2006 they also submitted the written notes of argument in support of their stand. The Industrial Tribunal has rejected their prayer for return of reference on 3rd April, 2006 which in fact is a common interim award/order passed below Exhibits 8, 9, 10, 11 and 14 by it. Exhibit 8 is filed by 7 employees with prayer to protect their service and status during pendency of reference before Industrial Tribunal. Exhibit 9 is submitted by one employee whose services were terminated and he claimed said termination during pendency of conciliation proceedings to be illegal and prayed for reinstatement by interim order. At Exhibit 10 and 11 two other employees have claimed similar relief. Employer filed application at Exhibit 14 seeking return of reference to Conciliation Officer. In present writ petition we are concerned with grievance of employer in this Exhibit 14 and the order dated 3rd April, 2006 rejecting that grievance.

3. I have heard Advocate P.C. Marpakwar for petitioner-employer and Advocate S.D. Thakur for Trade Union respondent No. 2. Learned AGP appeared for respondent No. 1.

4. Advocate P.C. Marpakwar has argued that reference as made by order dated 1-2-2006 is very vague and does not make out any dispute referred to Industrial Tribunal in terms of Schedule III of Industrial Disputes Act (IDA hereafter). He submits that no specific item of Schedule III has been mentioned in the reference and it only discloses names of 19 employees and states that they should be made permanent. Grant of "permanency" is not an item covered under any of the schedules and the order of reference does not specify any post or any vacancy against which or the date from which such claim is to be considered. He contends that therefore non-application of mind is apparent. In order to show other instance of non-application of mind he invites attention to the admitted facts that 6 of these 19 employees expressly withdrew their claims and did not want it to be referred to Industrial Tribunal. He further states that one employee filed complainant before Labour Court, Bhandara and hence in view of bar u/s 59

of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU Act hereafter) no reference could have been made about him. He further states that it was specific case of employer that Section 2(oo)(bb) of IDA expressly permitted it to engage persons on contract basis and concept of permanency was therefore foreign to it. According to him time bound contracts with these persons by employer in the facts were perfectly legal and hence, Conciliation Officer could not have made the reference without considering this right of employer. Standing Orders were therefore not relevant and "contractual employee" is not a classification under it. He has relied upon judgment of Hon"ble Apex Court reported at 1992 II Mh.L.J. 1171 : 1994 Lab. I.C. 959 between Maharashtra State Co-operative Cotton Growers Marketing Federation v. M.S.C.C.G.M.F. Union in support of his contention. Reliance is also placed on 2006 (1) CLR 29 (SC), Kishore Chandra Samal v. Divisional Manager, Orissa State Cashew for this purpose. It is further contended that applicability or interpretation of Standing Orders is within jurisdiction of Labour Court as said item is included in 2nd Schedule of IDA and hence Industrial Tribunal cannot possess jurisdiction to adjudicate about it. Judgment reported at 2006 I LLJ 820, Employers in relation to Management of Sudamdih Colliery v. Their Workmen is also pointed out to state how language in reference is to be understood and it has been stated that Reference Court cannot travel beyond such language.

5. Advocate S.D. Thakur has contended that permanency as indicated in schedule of reference order is the crystallization of various Items like 1, 2, 3, 4, 7, 9 and 11 of Schedule III of IDA and said order is required to be understood in the background of dispute raised and pleadings before Conciliation Officer, general grievance as understood by Conciliation Officer, his failure report. He invites attention to Rule 3 and 6 of Bombay Rules framed under IDA in support of his argument and further states that order of reference is only an administrative order. He argues that Section 2(oo)(bb) does not give any right to employer to engage employees on contract basis and it is restricted only to Section 25F in its application. He has tried to show how reliance by petitioner upon Maharashtra State Co-operative Cotton Growers Marketing Federation v. M.S.C.C.G.M.F. Union and Kishore Chandra Samal v. Divisional Manager, Orissa State Cashew (supra) is misconceived. However, I do not find it necessary to refer to all these arguments in detail. He also urged that, engagement of Contractors is against public policy and said provision cannot be used to exploit Labour. He has relied upon judgment reported at State of Madras Vs. C.P. Sarathy and Another, 1990 Mh.L.J. 361 : 1991 I LLJ 591 , Navbharat v. Nagpur Union of Working Journalists and Sheshrao Bhaduji Hatwar Vs. P.O., First Labour Court and others, . He also invites attention to Section 10(1)(d) of IDA to state that reference made to Industrial Tribunal is proper.

6. In State of Madras v. C.P. Sarathy (supra) Hon"ble. Shri Bose, J. agreed with other Hon"ble Judges forming Constitutional Bench but preferred to express that in said case there was sufficient compliance with the terms of Section 10(1)(c) of the Act even on the first respondent's interpretation of it, namely that the words

"the dispute" required Government to indicate the nature of the dispute which the Tribunal was required to settle. Hon"ble Judge states that order dated 20-5-1947 must be read along with the documents which accompanied it. The other Hon"ble Judges have considered the argument that reference was not competent as it was too vague and general in terms. After referring to the observations in judgment of High Court, the Hon"ble Apex Court observed:

13.---. It is, however, clear from the order of reference which is fully extracted in the judgment that it did not mention what the particular dispute was and it was in repelling the objection based on that omission that Kania, C.J. said:

The section does not require that the particular dispute should be mentioned in the order; it is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference.

14. This is, however, not to say that the Government will be justified in making a reference u/s 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry. It is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference u/s 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

7. Sheshrao Hatwar v. P.O. First Labour Court and Ors. (supra), after considering the above judgment and various other judgments, Division Bench of this Court observes:

7. Legal position is thus clear that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may contain the defence or may not. If points of difference are discernible from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference. From the order the reference dated December 6, 1982 made in the case at hand, it is clear that the Schedule referred to the demand of the worker. It has reference also to the report of the Conciliation Officer which spells out the controversy between the parties. In this background it cannot be said that the reference is made on the assumption that it was a case of termination and the only point left for adjudication was about the nature of relief to be granted to the workman. Undoubtedly, the reference is not happily worded. Unfortunately, that is generally the case as Supreme Court has observed. But that will not justify short-circuiting the reference by ignoring the basic background and subjecting the poor workman to untold misery and hardship involved in moving the machinery over again after a period of 8 years. That would be wholly unjust and empty formality. Even in civil jurisprudence mere framing of a vague issue does not vitiate the trial in the absence of prejudice. It is nobody's case before us that they did not know what controversy was really referred. Very fairly the learned Counsel for the parties did not dispute that inspiration behind the approach of everyone to the point was the case of Sitaram Shirodkar (*supra*).

In relation to the language of reference order the findings of Division Bench in paragraph 5 are important:

5. Section 10(1)(c) of the I.D. Act empowers the Appropriate Government to refer the existing or apprehended industrial dispute or any matter appearing to be connected or relevant to the dispute relating to any item specified in the Second Schedule to a Labour Court for adjudication. Section 2(k) of the I.D. Act defined the term "industrial dispute". Any dispute or difference between the employer and individual workman connected with or arising out of discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute u/s 2-A of the I.D. Act. The definition of "industrial dispute" is itself wide enough to include any dispute or difference "connected with the employment or non-employment". There is a long line of decisions of the Supreme Court taking a view that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The obvious reason for this approach is not only the width of language used in the definition of "industrial dispute" in Sections 2-A and 10 of the I.D. Act but also the object behind the labour legislations. Industrial peace has to be achieved as early as possible and the battle is generally between unequals. At least one party, namely, the worker cannot afford to fight continuous long drawn battle against the employer and hence technical, formal and procedural points have almost no place in such disputes. Indeed the

duty of Courts and Tribunals is to discourage ingenuity on such points and to adjudicate the controversy on merits. Many times the reference is cryptic and vague and is not properly worded. Sometimes it is not even possible to mention therein the defence of the other party. In such cases it is the duty of the adjudicating authority to examine the pleadings, documents etc. and to locate the exact nature of dispute.

8. In the facts of present case there is an order of reference in writing in relation to 19 persons who claimed to be employees of petitioner establishment. Their names are specified and the order of reference enables Industrial Tribunal to find out whether they deserve to be made permanent. The order of reference also mentions that there were conciliation proceedings which failed. These facts are not been dispute. The order of reference further mentions that referring authority has considered failure report submitted by Conciliation Officer and it records a prima facie satisfaction that reference in relation to said dispute needs to be placed before Industrial Tribunal. The holding of conciliation proceedings is not in dispute and in fact, petitioners have placed before this Court copy of reply filed by them before Conciliation Officer. Said reply mentions names of 6 persons from amongst 19 persons and states that these 6 persons have sent communication to Conciliation Officer that they have not authorised Trade Union (respondent No. 2 herein) to raise any industrial dispute pertaining to their permanency, regularisation or claiming any benefits under provisions of any Award. It also mentions that Prashant Gajbhiye has filed U.L.P. complaint before Industrial Court at Bhandara. Petitioners have therefore stated that there cannot be any conciliation in relation to these persons. In relation to Smt. Vaidehi Ranade and Shri Jagdish Bhagat reply states that contract of petitioners with them has expired on 30-9-2005 and hence they are not entitled to raise any dispute. It is therefore apparent that before respondent No. 1 there was enough material to establish existence of dispute and grievance that no "industrial dispute" has been referred or about order of reference being too vague, does not hold any water. When the order of reference is perused in the background of conciliation proceedings, the difference between parties is clearly discernible.

9. It is no doubt true that Schedule III of IDA does not expressly mention an item about permanency. It is admitted position that neither Second Schedule nor Third Schedule contains this item. Reference in present matter is to Industrial Tribunal constituted u/s 7A and Sub-section (1) thereof authorises Appropriate Government to constitute it for adjudication of Industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule. Section 10(1)(c) permits Appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule to a Labour Court. Similarly Section 10(1)(d) employees the same language and permits Appropriate Government to refer the dispute to Industrial Tribunal. Such dispute or matter appearing to be connected or relevant to the dispute may be in relation to any matter specified in Second Schedule or Third Schedule. The wide definition of "Industrial Dispute" is

commented upon by Division Bench of this Court in paragraph 5 of judgment *Sheshrao Hatwar v. P.O. First Labour Court and Ors.* (supra) hence, I do not find it necessary to reiterate the same. The words are used separately in Section 10(1)(a) and (b). In this background, these words employed in Section 10(1)(c) or (d) highlighted above also reveal very wide coverage expected of them by legislature. Said provisions permit Appropriate Government to refer not only dispute but also any matter which appears to it to be connected with it or which appears to it to be relevant to the dispute. It is settled position that order of reference is an administrative order and legislature has given very wide powers to Appropriate Government to make reference if it is prima facie satisfied that such matter has some link with dispute or is relevant having some bearing on it. Difference in language of Section 10(1)(c) or (d) also needs to be noticed. If "such matter" or "dispute" relates to any matter specified in Second Schedule, reference provided is to Labour Court. However, 10(1)(d) contemplates such reference to Industrial Tribunal whether "such matter" or "dispute" relates to any matter specified in Second Schedule or Third Schedule. Thus when "such matter" or "dispute" is in relation to any matter specified in Third Schedule reference to Labour Court is prohibited. In relation "such matter" or "dispute" either under Second Schedule or Third Schedule absolute discretion is given to Appropriate Government. It is therefore more than clear that in any case, if there is any doubt about the exact placement of "such matter" or "dispute" or because of its effect there is likely overlapping between these two Schedules, Appropriate Government has discretion to safely refer the matter to Industrial Tribunals. Thus a very pervasive scheme has been made by legislature in this respect looking to the basic object of enactment and the same needs to be honoured by brushing aside the technical pleas. Petitioners were always aware of difference/dispute or grievance and have rightly filed their reply or written statement before Industrial Tribunal. They have not pleaded and pointed out any prejudice in this respect and also not contended that the statement of claim filed after reference by respondent No. 2 Trade Union in any way travels beyond the compass of order of reference.

9A. Second Schedule is u/s 7 and it provides list of 6 matters within jurisdiction of Labour Court. The first item or matter is "the propriety or legality of an order passed by employer under the standing orders;". The second entry is "the application and interpretation of standing orders;". The third matter deals with discharge or dismissal of workman, the fourth matter deals with withdrawal of any customary concession or privilege and Item 5 deals with a legality otherwise of a strike on Lock-out. The last item is a residuary item and it reads: "6. All matters other than those specified in the Third Schedule." Petitioner has relied upon second entry to contend that reference ought to have been to Labour Court and not to Industrial Tribunal.

Third Schedule is prescribed u/s 7A and it deals with matters within jurisdiction of Industrial Tribunal. 11 Items prescribed under it read:

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit-sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
10. Rationalisation;
11. Any other matter that may be prescribed.

Justification statement in regard to demand for regularisation and permanency filed by respondent No. 2 Trade Union before Conciliation Officer states that about 77 employees are being employed in different occupations either on contract basis or as apprentices for years together. The occupations and number of employees holding said occupations is specified and it is further stated that establishment of Employer publishing 3 daily newspapers is covered by Working Journalists and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955. Wage board's fixing scales of pay and applicability of Model Standing Orders is thereafter pointed out. It is also pleaded that occupations earlier stated are covered by various awards and state that employees occupying those posts must be regular and permanent employees and converting such posts or employees on contract basis is repugnant to provisions of these awards. It is contended that there was no notice u/s 9A of IDA before such conversion. Demand made is to discontinue alleged illegal system of engaging employees on contract basis and for their regularisation and for grant of permanency to them after they completed 240 days of continuous service and to give to them benefits of relevant Awards with retrospective effect. Petitioner/employer has filed appropriate reply refuting the allegations made and denying the entitlement and stressing the right of employer to employed workman for a specific period under IDA. It need not be disputed at this stage that thus by recruiting employees on contract basis in exercise of their alleged right under IDA, petitioner has effected rationalisation under Entry 10 of Third Schedule. If respondent No. 2 Trade Union succeeds in its effort, employees will stand to gain in relation to various items/entries specified at serial number 1 to 5. Nothing more needs to be adjudicated in this respect at this stage than recording a conclusion that satisfaction of Appropriate Government about existence of a "dispute or matter" covered under Third Schedule is neither perverse nor its action of referring the dispute to Industrial Tribunal, without jurisdiction. Word "permanent" used in reference order by respondent No. 1 is cumulative effect or crystallisation of all entries specified in Third Schedule together. Coming to Second Schedule one can also

say that dispute is in relation to application and interpretation of Model Standing Orders or it is covered by residuary Entry No. 6 thereof. The defence of Employer shows that employer is trying to vindicate his stand about having right to employ contractors or contractual employees in view of Section 2(oo)(bb) of IDA which may again be in relation to or connected with or dispute about "Rationalisation". Trade Union wants its discontinuation and restoration of or substitution of direct employment in its place. The wide phrases employed in Section 10(1) discussed above therefore definitely permit Appropriate Government to make reference to Industrial Tribunal. If the respondent No. 2 Trade Union succeeds before Industrial Tribunal, the employees whose cause is being espoused by it will become permanent and regular employees of petitioner. Recognition of a status as permanent is therefore cumulative effect of various items or entries of Third Schedule mentioned above. The word "permanent" used in order of reference has got definite meaning in service jurisprudence. It is therefore clear that order of reference has been precisely formulated and there is nothing general or too vague about it. The objections raised by employer petitioner on these lines are therefore unsustainable. Even if it is presumed to be cryptic, to petitioner and respondent No. 2 it makes sense and has been observed by Division Bench in case of Sheshrao Hatwar v. P.O. First Labour Court and Ors. (supra) many times the reference may be cryptic and vague and not properly worded. In such cases it is the duty of the adjudicating authority to examine the pleadings, documents etc. and to locate the exact nature of dispute. Rules 3 and 4 of Bombay Rules under IDA do not require any particular language to be used and it cannot be said that respondent No. 1 has in any way violated these Rules. Such order has to only reveal a finding that upon perusal of failure report respondent No. 1 was prima facie satisfied about existence of dispute. Hence, I find that the objection of petitioner that reference in any case ought to have been to Labour Court is liable to be rejected.

Employers in relation to the Management of Sudamdih Colliery of Bharat Coking Coal Ltd. Vs. Their workmen represented by Rashtriya Colliery Mazdoor Sangh, has been relied upon by Advocate P.C. Marpakwar to contend that the reference was incompetent as it did not consider the effect of withdrawal of their grievance by 6 employees or effect of filing of U.L.P. complaint by employee Prashant Gajbhiye whose grievance was also sought to be espoused by Trade Union. Perusal of this judgment of Hon"ble Apex Court reveals that the matter went to it after Tribunal answered the reference on merits in favour of workmen holding them to be in employment of principal employer. The Hon"ble Apex Court noticed that there was delay on part of workmen in seeking reference and also its earlier judgment in case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], relied on by High Court was not good law in view of its Constitution Bench judgment in Union of India (UOI) Vs. Mangat (Dead) by L.Rs. and Others, . It is in this background that the Hon"ble Apex Court has in paragraph 13 considered the effect of omitting names of claimants whose cause was being espoused by Union. The Hon"ble Apex Court has taking over all view

remanded matter back to High Court for the consideration. The effect of omitting names of claimants in reference order where relationship of employer and employee is itself in dispute and grievance is being espoused by trade Union definitely causes prejudice to principal employer and also to the contractor. This judgment does not support the case of petitioner Employer because here names of all employees are included in order of reference itself. It is no doubt true that petitioner has stated that 6 of them have withdrawn their grievance and Shri Gajbhiye has filed independent complaint u/s 28 of MRTU Act, and hence reference ought not to have been made about them to the Industrial Tribunal. It appears that there was some dispute about these withdrawal letters and Trade Union did contend before Conciliation Officer that signatures of employees were procured by force by petitioner. The issue could not have been gone into by Conciliation Officer and he was bound to submit failure report and Appropriate Government was duty bound to make reference as per said report. The disputed issue could not have been resolved either by him or by Appropriate Government. Similarly, bar u/s 59 of MRTU Act can be applied only after adjudication by Industrial Tribunal and not by these authorities. However this need not detain us more because Advocate S.D. Thakur for respondent No. 2 Trade Union has declared that it is not prosecuting reference for these 6 employees or for Shri Gajbhiye. In any case, perusal of failure report committed by Conciliation Officer (respondent No. 3) reveals that he has mentioned withdrawal by 6 workers in it and reference has been made by respondent No. 1 after perusal of said report. In *Navbharat v. Nagpur Union of Working Journalists* (supra) the Division Bench has observed in somewhat similar situation as under:

15. A capital was sought to be made out on behalf of the petitioner Nava Bharat regarding majority of the Working Journalists listed in the schedule to the order of reference withdrawing their support to the industrial dispute by sending intimation in writing that the disputes between them and the management have ceased to exist and on that count also the reference is rendered incompetent and invalid. This ground was opposed on behalf of the first respondent Union by contending that the letters were secured by the management under duress. It is not necessary for us to enter into this controversy, because even presuming that the letters were voluntarily dispatched by 11 Working Journalists withdrawing their support to the dispute, that would not by itself render the reference incompetent and/or invalid. One cannot lose sight of the fact that on the date of demand as well as during the pendency of the proceedings and also on the date of reference all the 17 Working Journalists, which constituted a bulk or a class as aforesaid, desired an adjudication in the matter. Once a valid reference for adjudication has been made, it is idle to contend that the Industrial Tribunal shall cease to have jurisdiction to deal with the reference by reason of the fact that the majority of workmen, who had collectively sponsored the cause of workmen by raising a dispute, had subsequently, during the pendency of the adjudication, retracted or withdrawn their support. It is correctly pointed out by the Industrial Tribunal that its jurisdiction to adjudicate the industrial dispute stems from and

is sustained, until it makes an award and the same becomes enforceable by the reference itself, which has been made on the basis of industrial dispute existing or apprehended on the date of reference and the jurisdiction to proceed in the matter is not in any way affected by the fact that subsequent to the date of reference the workmen or a substantial number of them, who had originally sponsored the cause, had later resiled or withdrawn from it. There is no substance even in this contention that the reference has become incompetent and, therefore, invalid.

These factors therefore do not reveal any non-application of mind necessitating return of reference as sought for by petitioner. Reliance upon law expounded in Maharashtra State Co-operative Cotton Growers Marketing Federation v. M.S.C.C.G.M.F. Union (supra) and Kishore Chandra Samal v. Divisional Manager, Orissa State Cashew (supra) at this stage is misconceived. The defence of Employer being right in engaging these persons on contract basis for fixed duration or effect of Section 2(oo)(bb) of IDA on such employment are the debatable issues which can be and will be gone into by Industrial Tribunal while considering the controversy on merits. The defence of Employer need not be mentioned in order of reference and is not foreclosed by it. Same cannot be a reason to refuse to make reference or to return reference. The learned Member of Industrial Tribunal has properly appreciated the controversy and there is no perversity or jurisdictional error warranting any interference in writ jurisdiction.

11. Accordingly writ petition is dismissed however without any orders as to costs