

(1981) 10 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No"s. of 14242 and 14243 of 1981

Newspapers and Periodicals

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-10-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 324
Working Journalists and other Newspaper Employees (Conditions of Services) and
Miscellaneous Provisions Act, 1955 — Section 17, 17 (1), 17 (2), 2 (f)

Citation : (1981) 2 KarLJ 577 : (1982) 1 LLJ 189

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Judgement

1. The Government of Karnataka (1st respondent herein), by its order dated 23-5-1981 (vide Annexure-P in No. SWL 18 LAW 81), referred, under sub-s. (2) of S. 17 of the Working journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 (the Act), a dispute said to exist between the petitioners and the 4th respondent, to the Labour Court, Bangalore, for adjudication.

2. The dispute relates to the claim of the 4th respondent for recovery of a sum of Rs. 72,719-38 from the petitioners which according to him, they were liable to pay towards his wages and bonus for the period from 9-7-1971 to 31-12-1979.

3. In these petitions, filed under Art. 226 of the Constitution of India, the petitioners seek a writ of certiorari or any other appropriate writ or order or direction quashing the order of reference, Annexure-P.

4. The 1st petitioner, which is a proprietary concern, alone claims to own and publish a Kannada Weekly under the name and style "Prajamatha". According to it, the 4th respondent used to previously work under it from 9-7-1971 to 4-6-1980. On which date his services had been terminated. It further pleads that subsequent to the termination of his service, the 4th respondent had ceased to be a working journalist with the meaning of S. 2(f) of the Act. It is the case of both the petitioners that the 2nd petitioner, a private limited company owning a

printing press, only does the printing work of the Weekly and does not have anything to do with the affairs of the 1st petitioner and is unconcerned with the alleged dispute raised by the 4th respondent.

5. Earlier to the State Government taking a decision, to refer the alleged dispute to the Labour Court, the 4th respondent had approached the Commissioner of Labour of the State of Karnataka under sub-s. (1) of S. 17 of the Act for issuing a certificate as contemplated under sub-section for the amount claimed by him for recovery of the same as an arrear of land revenue. According to the 4th respondent the Commissioner of Labour was the authority specified by the State Government in this behalf as contemplated in the said sub-section and power and jurisdiction to deal with his claim under that provision. In this connection he relies on a notification dated 17-3-1975 issued by the State Government under S. 17 of the Act specifying the Labour Commissioner as the authority for purposes of the section (May see Govt. Notification No. SWL 38 LAW 71). The Commissioner of Labour after issuing notices to the petitioners and hearing them and the 4th respondent, rejected the application made by the 4th respondent, on the ground that had no powers to deal with such a claim unless the claim is referred to him by the State Government, whom the concerned were required to approach at the first instance (vide Annexure-O in No. WJA/CR-14/79-80, dated 21-1-1981). It may be noted that the 1st petitioner, reserving his right to raise further objections on merits at a later stage, had taken up objections, before the Commissioner of Labour in this matter questioning his jurisdiction and competence to deal with this claim of the 4th respondent.

6. The petitioners are challenging the impugned order of reference (Annexure-P) mainly on two grounds, namely :

(1) the sub-s. (2) of S. 17 of the Act, under which the impugned order has been made by the State Government itself, is unconstitutional and void offending Art. 14 of the Constitution, conferring, as it does, arbitrary and unguided powers to the State Government in the matter of making reference to the Labour Court; and

(2) that, even otherwise, the reference having been made without hearing his clients, was void as the same had been done in violation of one of the basic postulates of the principles of natural justice, the principles of fair hearing.

7. Since both the grounds of attack touch on the ambit and scope of S. 17 of the Act, let us first examine the same. Section 17 reads as follows;

"17. Recovery of money from an Employer : (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf or in the case of death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and

the Collector shall proceed to recover that amount in the same manner as in arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1)."

Prior to its amendment by Central Act 65 of 1962, S. 17 stood as follows :

"Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

Sub-section (1) of S. 17, as it stands subsequent to the substitution of new S. 17 by Central Act. No. 65 of 1962, is in terms almost analogous to the old section. Only sub-s. (2) and (3) have been added to that section by way of the aforesaid amendment.

8. While construing S. 17, as it stood prior to its substitution, the Supreme Court in *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, observes as follows :

"The section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of S. 17 is a prior determination by a competent authority or the Court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by S. 17 without prejudice to any other mode of recovery available to him. When every the Legislature wants to confer upon any specified authority powers upon any specified authority powers of a civil Court in the matter of holding enquiries, specific provision is made in that behalf. It the Legislature had intended that the enquiry authorised under S. 17 should include within its compass the

examination of the merits of the employee's claim against his employer and a decision on it, the Legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specific authority the relevant powers essential for the purpose of effectively holding such an enquiry. The powers of the authority specified under S. 17 must be found in the provisions of the Act itself, and they cannot be inferred from the accidental circumstance that the specified authority otherwise is a member of the Industrial Tribunal; since there is no provision in the Act which confers on the specified authority the relevant and adequate powers to hold a formal enquiry, it would be difficult to accept the position that various questions which may rise between the working journalist and their employers were intended to be dealt with in a summary and an informal manner without conferring adequate powers on the specified authority in that behalf".

The above observations of the Supreme Court apply equally even while construing the ambit and scope of S. 17 as it stands now (after its substitution by Central Act No. 65 of 1962). The position has not changed except for the fact that under sub-s. (2), as it stands now, the State Government has been conferred with powers to refer the question, the question being as to what amount, if any, is due to a working journalist from his employer, to an appropriate Labour Court for adjudication. The amount due under the Act means wages, which the newspaper employee claims he is entitled to get from his employer, as fixed by the Wage Board constituted under the Act to that category of employee to which he claims that he belongs to. As observed by the Supreme Court in *Kasturi & sons* case that it is only if an after the amount due to the employee has been duly determined that the stage is reached to recover that amount invoking S. 17."

9. A question as to the amount due under the Act, is contemplated under sub-s. (2) would arise only if the employer challenges either the right of the claimant to claim the amount (his status), or the quantum. In such a case the State Government may refer that question to the Labour Court either upon an application made to it by the employee of its own motion. In this context the question that arise, as contended by the learned counsel for the petitioners are (1) whether this provision, sub-section (2) of S. 17 confers any arbitrary and unguided power on the State Government; and (ii) is it incumbent on the State Government to hear the employer before referring such a question to the Labour Court ?

10. Taking the first question for consideration the question we have to ask ourselves is what, after all, is the power that is vested in the State Government under sub-s. (2). The power is only this much, and, that is, if it feels that there exists a dispute in the matter of a claim made by the working journalist, it should refer the same to a Labour Court for adjudication. It may be noted that the complaint of arbitrariness now made is by the employers. The discretion of the State Government is only this much, and that is, that either it can refer a dispute

or decline to make a reference, and it is only the employee who can invoke the aid of S. 17. The question of showing any discrimination against the employer as such does not arise under this provision. And further discrimination between whom ? The employer and the employee belong to different categories and the law makes a clear distinction between them in so far as the application of this law to their inter se relationship is concerned. They are not similarly situated. The object underlying the incorporation of S. 17 in the Act is to provide a cheap and speedier remedy to a working journalist in the matter of recovery of monies due to him under the Act. In a case like this the employer cannot challenge the vires of S. 17 or S. 17(2) as violative of Art. 14 of the Constitution of India. In this connection I may refer to certain observations of the Supreme Court in *Virendra Vs. The State of Punjab and Another*, In that case the constitutional validity of certain provisions of the Punjab Special Powers (Press) Act, 1956 were challenged amongst other grounds also, on the ground that those provisions confer unguided and arbitrary powers on the executive. Sections 2 and 3 of that Act conferred powers on the State Government to prevent the publication of newspapers and periodicals or other publications if the State Government were to be satisfied that such action was necessary for the purpose of preventing or compacting any activity prejudicial to the maintenance of communal harmony affecting or likely to affect the public order. It was alleged that these provisions had conferred unbridled powers on the State Government. Adverting to this argument the Court observes as follows to (at page 901 paras 12 and 13)

"As explained by this Court, in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the dictum of Mukherjee, J., can have no application to a law which sets out its underlying policy so that the order to be made under the law is to be governed by that policy and the discretion given to the authority is to be exercised in such a way as to effectuate that policy, and the conferment of such a discretion so regulated cannot be called invalid.

The two sections before us lay down the principle that the State Government or the delegated authority can exercise the power only if it is satisfied that its exercise necessary for the purpose mentioned in the sections. It cannot be exercised for any other purposes. In this view of the matter neither of these sections can be questioned on the ground that they give unfettered and uncontrolled discretion to the State Government or an executive officer in the exercise of discretionary powers given by the section ...

No assumption ought to be made that the State Government or authority will abuse its power. To make the exercise of the power justiciable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute but the abuse of power."

Further taking not of the fact that the discretion to be exercised in that case was by the State Government or a higher functionary and not by a minor functionary, the Court observes as follows : (also at para-12).

"In the first place, the discretion is given in the first instance to the State Government itself and not to a every subordinate officer like the licensing officer, as was done in Dwaraka Prasad's case. It was true that the State Government may delegate the power to any officer of person but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation."

In the instant case, though under sub-s. (1) of S. 17 the power can be delegated by the State Government to another authority working under it, no such power is reserved under sub-s. (2), and under sub-s (2) it is the State Government and the State Government alone that has to exercise its powers. Counsel for the petitioners, in the course of his arguments, tried to press forward the plea that in view of the fact that sub-s (2) of S. 17 is silent on the question of hearing of both the sides by the Government before deciding as to whether it should refer the dispute to the Labour Court, the provision should be held as one conferring absolute unguided powers on the executive. Even assuming that the employer deserves a hearing by the Govt. Before it decides to refer the dispute, even then the provision cannot be struck down as arbitrary only because that provision or the rules made there under, if any, do not provide for a hearing of the employer. In such a situation the omission in the law has to be supplied by reading into it this principle. In this connection the following observations of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, may be noted.

"Now, it is true that there is not express provision in the Passport Act, 1967 which requires audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question, if the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Cooper v. Wandsworth Board of Works* (1863) 14 CB NS 180. A long course of decisions, beginning with *Dr. Bentley's case* (1723) 1 Str. 557 and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature."

Thus, viewed from any angle, sub-s. (2) of S. 17 of the Act cannot be held as void on the ground that it confers arbitrary and unguided powers on the State Government in the matter of making reference to the Labour Court.

11. Now, to consider the other ground of attack, counsel for the petitioner says that a reference made under sub-s. (2) of S. 17 of the Act entails civil consequences and, therefore, reference made, in the instant case, without hearing his clients, was void having been arrived at in violation of the principle of natural justice. He could not cite any direct authority in support of this contention but placed strong reliance on a Division Bench decision of this Court in *Indian Telephone Industries Ltd. Vs. State of Karnataka and Others*, a decision in which S. 10(2) of the Industrial Disputes Act, 1947 came up for consideration. On the other hand, the learned counsel appearing for the 5th respondent submitted that

the ratio of the decision in ITI's case is not applicable to the facts of this case and that it was not necessary for the State Government to hear the parties before making any reference under sub-s. (2) of S. 17 of the Act Both the learned counsels referred to a number of authorities in support of their rival contentions. I shall be referring to a few of them, and, in particular, to one or two decisions of the Supreme Court which have some bearing on certain aspects of this question. The 4th respondent, who argued his case in person, also submitted that it was not necessary for the Government to hear any of the parties before making a reference and further submitted that, in the instant case, the Government had all relevant materials before it and after applying its mind had decided to refer the dispute to the Labour Court and, therefore, the reference, in the circumstances, was not void, The learned Government Pleader appearing for the State also supported the reference and submitted that the circumstances do not warrant any interference in the order of reference made by the Government.

12. While dealing with the allegation of the petitioners that sub-s (2) of S. 17 confers unguided and arbitrary powers on the State Government in the matter of making a reference, I have referred to the nature of the decision that Government can take under sub-s. (2). I have also referred to the observations of the Supreme Court in *Kasturi & Sons* case (extracted above) wherein the Court has observed that the S. 17 provides for a procedure to recover the money due from any employer and not for determination of the question as to what amount is due. In this decision, as already stated, the Court was dealing with S. 17, as it stood prior to its amendment by Central Act 65 of 1962, which section is similar in substance to sub-section (1) of S. 17 as it stands now. In both these provisions, i.e., S. 17 as it stood and S. 17(1) as it stands, the sentence "and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate" may be noted. So, before issuing a certificate specifying the amount recoverable from the employer, the State Government or the specified authority should be satisfied about the amount due. Even in the matter of issuing a certificate for recovering the amount as provided in S. 17(1), where the Government can issue such a certificate only when it is satisfied that any amount is so due, the enquiry contemplated is very limited, and, as observed by the Supreme Court in *Kasturi & Sons* case (supra), the Government cannot embark upon an enquiry to examine the merits of the case. The following observations made at para 7 in that case may be noted :

"On the other hand, the case for the petitioners is that the section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of S. 17 is a prior determination by a competent authority or the Court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by S. 17 without prejudice to any other

mode of recovery available to him. According to this view, the State Government or the authority specified by the State Government has to hold a summary enquiry on a very narrow and limited point. Is the amount which is found due to the employee still due when the employee makes an application under S. 17, or has any amount been paid, and, if yes, how much still remains to be paid ? It is only a limited enquiry of this type which is contemplated by S. 17. Within the scope of the enquiry permitted by this section are not included the examination and decision of the merits of the claim made by the employee. When the section refers to the application made by the employee for the recovery of the money due to him, it really contemplates the stage of execution which follows the passing of the decree or the making of an award or order by an appropriate Court or authority. In our opinion, the construction suggested by the petitioner should be accepted because we feel that this construction is more reasonable and more consistent with the scheme of the Act".

13. If we carefully compare sub-s. (1) with sub-s. (2) of S. 17, we find that the discretion vested in the Government under sub-s. (2) is narrower than the discretion that vests with the Government under sub-s. (1) in the matter of issuing of a certificate there the Government, before issuing a certificate has to satisfy itself, and in sub-s. (2) that term "is satisfied" is conspicuously absent. What sub-s. (2) states is that if any question arises as to the amount due to a newspaper employee from his employer, the State Government, either on its own motion or on an application made to it, may refer the question to any Labour Court. It cannot enter into any discussion as to the merits of the claim, relating either as to the status of the persons involved, or to the quantum of the money claimed. Now, all the three sub-sections of S. 17 will have to be read together and not in isolation. The heading of S. 17 is "recovery of a money due from an employer". All the three sub-sections deal with the same question. As observed by the Supreme Court in *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, that where the Court is dealing with two sub-section of a section it is necessary that the two sub-sections must be construed as a whole "each portion throwing light, of need be on the rest," The two sub-sections must be read as parts of an integral whole and as being inter-dependent " If so read what S. 17 construed as a whole conveys ? A person, who claims to be a newspaper employee, may take recourse to these provisions for recovery of the amount said to be due to him under the Act by his employer and request the Government to issue a certificate to the Collector in order to recover that money as an arrear of land revenue and pay the same to him. If the government is satisfied that the money claimed is due, it has to issue a certificate. But, if any question arises as to the amount due, then it has to refer the same to the Labour Court. After deciding this issue the Labour Court will have to forward its finding to the Government so that it may issue a certificate and recover the money as provided in sub-s (2). Here again it may be noted that this cheaper remedy made available to the newspaper employee is "without prejudice to any other mode of recovery" he may have in law. This means he can, if he so chooses, file

a regular suit or may perhaps take recourse to S. 33C of the Act, 1947. If the newspaper employee takes recourse to any of these alternative methods, the question of hearing the employer earlier to initiation of any action does not arise at all. After a reference is made by the Government under sub-s (2) to the appropriate Labour Court, it will deal with the question following the procedure laid down under the Act of 1947. It will issue notices to the parties concerned, give them full opportunity to put forward their pleadings, raise points in dispute, permit the parties to adduce evidence in support of their respective contentions, and after hearing the parties or their counsel it will take a decision on the points or issues raised by it. The employer will have full opportunity to put forward his cases in response to the claim made by the alleged employee. In a situation like this, is it necessary for the Government to hear the employer before referring the question to a Labour Court ? Is it necessary for the Government to call upon the employer to say as to why he should not face an enquiry in the Labour Court ? We will take one or two analogous situations. "X" makes a complaint against "Y" the complaint involving a cognizable offence. An officer in charge of the police station registers a case, sends a F.I.R., to the Court concerned, proceeds with the investigation, and after collecting the materials, will send his challan, if there is a prima facie case, to the Court. But before proceeding with the investigation, the law does not enjoin upon him to ask "Y" as to why the case should not be registered against him and enquired into. We will take another example. "X" makes a complaint to the Court against "Y". The sworn statement of "X" and his witnesses "if any" present in Court, is taken down by the Court and the Court may either issue process to "Y" or may refer that matter for further investigation to the police. In either case the procedure laid down in law does not provide for any hearing of the opposite side either prior to the Court ordering issue of process or referring the matter to the police. It was argued by the learned counsel for the petitioners that making of a reference involves civil consequences, in that, his clients would be called upon by the Labour Court to face a trial and his clients would have to pass that ordeal. Like in every civilised system of administration, in our set up also, are constituted various authorities and functionaries whose duty it is to investigate, enquire into, and decide disputes. If unnecessary allegations are made, frivolous charges are framed or false claims set up, and the party innocent is made to face those things, he has his remedy. He can press for costs, he can take recourse to claim damages for malicious prosecution, and may even, under exceptional circumstances, claim damages. But to say that to go before such forums to face trials itself is an ordeal, would be a fanciful "touch-me-not-ism" and should have no place in a democratic set up. We will also look at this problem from another angle. "X" a person who claims to be a newspaper employee, approaches the Government, with an application stating that his employer was liable to pay him towards wages, etc., under the Act so much amount and that, in spite of demands, the employer has not been complying with the request. Should the Government in such a situation ask the employer as to why he should not be heard in the matter by the Labour Court ? Otherwise by issuing a notice to the employer and hearing

him, what is it that the Government decides acting under sub-s (2) of S. 17 of the Act ? Can it decide the question that X was not a news-paper employee a working journalist or can it decide that the amount claimed was bogus or had been discharged. All these questions are beyond the scope of the enquiry under sub-s. (2) of S. 17. These can appropriately be decided only after a full enquiry by the Labour Court. The employer cannot say not to refer the matter to the labour Court and at the same time cannot also ask the government to go into these questions and decided the same to do, which it has no powers and is not competent.

14. Let us now see how far the ratio in ITI's case controls this case and what bearing or implication that authority will have in dealing with the question now before us. At this stage it may be relevant to note, as observed by the Supreme Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, that "whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power." Also, it is necessary to bear in mind, as observed by the Supreme Court in Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others, that "each statutory provision has to be construed on its own language though the general scheme of legislation on a given subject may, if necessary be kept in view, if it throws helpful light on the construction to be placed on an ambiguous provision, and, if no such consideration arises reference to another Act is not required". Again, the following observations of the Supreme Court in D. N. Banerji v. P. R. Mukherjee 1953 I Ilj 195 may be noted :

Though the definition may be more or less the same in two different statutes, still the object to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful but cannot be taken as guides or precedents.

As observed by the learned Authors O. P. Malhotra and K. R. Malhotra in their "The Law of Industrial Disputes", the Industrial Disputes Act was "enacted, as its preamble and the long title show, to provide machinery and forum for the investigation of industrial disputes and for the settlement thereof and for purposes analogous and incidental thereto," and "for adjustment of such conflicting and seemingly irreconcilable interests without disturbing the peace and harmony in the industry assuring the industrial growth which was the pre-requisite for a welfare State". And again as further stated "the need for State intervention permeates the Act in its broad lines." which in a welfare State cannot afford to look askance at industrial unrest and industrial disputes." (See

page-3, Vol-I, III Edn. Even though such has been the object and scope of that enactment the learned Authors say, referring to a number of authorities of various Courts, that it was not incumbent on the Government to give a pre-hearing while making a reference under S. 10 of the Act. At para-12, sub-12 sub-para (9) at page 618 they say as follows :

"(9) Notice - The function of the Government under S. 10(1) in making order of reference is in administrative and not a judicial or quasi judicial one for the determination of the rights of the parties. Hence the failure of the "appropriate Government" to give notice of the order of reference to the parties does not vitiate the exercise of the statutory power of the Government vested in it under S. 10(1) of the Act. Since the order of reference is to be made upon the subjective satisfaction of the Government. There is no question of any hearing being given to the parties. Hence an order of reference without giving notice to the parties concerned would not be violative of the rules of natural justice. The failure of the Government to give notice to either of the parties would not sustain as charge of mala fides on that ground alone."

But this is not to say that the principles enunciated in ITI's case by a Division Bench of this Court is not good law or does not bind this Court provided the facts and the law involved are similar. The facts are not similar provision of law dealt with in the two cases in their ambit and scope if each is looked at from its own background and totality of circumstances, are entirely different. The ramifications of a reference under the Act of 1947 and the implications of decisions rendered by the Industrial Tribunals or the Labour Courts in a given case, and particularly involving labour unions commanding membership of thousands of persons, would indeed be far reaching. The formulation of points in the order of reference made under that Act limits and circumstances the powers of the Court or the Tribunal. But such is not the case here. As already observed the reference involves a simple issue, it being, whether any amount is due to the claimant and if so how much. Incidental questions as to the status of the claimant, the state of relationship the parties etc., may be raised but they can be so raised only before the Labour Court or that forum to which reference is made and not at the Government level. I am, therefore, of the view that the ratio enunciated in ITI's case cannot be applied to the facts of this case.

15. But, then the argument of the learned counsel for the petitioners is that ITI's case lays down precisely what in a given set of situation entailment of civil consequences means and from that angle the ratio enunciated therein and touching this question the meaning of the term "civil consequences" will have a bearing on this case. Let us see, if it is so. In that case one of the Works Managers of the Factory had been assaulted and in that connections there was a criminal proceedings and the management, also taking action under the certified Standing Orders, had terminated the services of a few workers. Their labour union had sponsored their case before government for a reference of that dispute to the Labour Court. After hearing both the sides and providing each side, the

labour union and the management full opportunity to have their say, the Government had declined to make any reference as sought for by the labour union at the first instance. But, subsequently, in respect of the same matter, at the instance of the union, but without hearing the management, reversing its earlier decision, the Government referred the alleged dispute under S. 10 of the Act of 1947 to the Labour Court. That came to be challenged by the management before this Court. One of the contentions urged on behalf of the management was that the order of reference was violative having been made by the Government without hearing the management. This argument was sought to be sustained mainly in the light of the decision of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . On the other hand, the contesting respondents argued in that case, placing reliance on a decision of this Court in *Kirloskar Electric Company Limited Vs. Workmen of Kirloskar Electric Company Limited*, which had been upheld by a Division Bench of this Court in WA No. 164 of 1974 (dated 29-7-1975), that the argument based on prior notice to parties while acting under S. 10 of the Act of 1947 cannot be pressed into service. According to the learned counsel for the contesting respondents the ratio enunciated in *Kirloskar Electric Company's* case applies on all fours to the facts in *ITI's* case and was therefore, binding on the Division Bench deciding the latter case.

16. In *Kirloskar Electric Co's* case the learned single Judge, Venkataramiah, J., (as he then was) has observed as follows :

The management would not suffer any kind of prejudice if the State government proceeds to make a reference under S. 10(1) of the Act without hearing the parties, although it has, on an earlier occasion, declined to refer.

In order to decide whether an opportunity should be given to a party concerned, it would be necessary to bear in mind the nature of the power that is exercised, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. When the State Government make a reference under S. 10(1) of the Act of an industrial dispute for adjudication to a Labour court or Industrial Tribunal, it does not decide any question of fact or law."

So long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there should be no reference and acts upon such relief does not affect the jurisdiction of the Government to make the reference"

While challenging the decision of the learned single Judge, before the Division Bench on behalf of the appellant, reliance was placed on decision of the Madras High Court in *K. Abdul Salam & Co. v. State of T.N.*, II 43 F.J.R. 180. Referring to the relevant passage in *Abdul Salam's* case and repelling the arguments

advanced on behalf of the appellant, the Division Bench (consisting of Chandrashekhar, J., (as he then was) and Venkataswami J.) was pleased to observe at para-7 of its judgment as follows :

"It is seen from the above passage that in that case the Government revised its earlier opinion solely on receipt of further representation from the workmen as from a member of the public. In the present case the facts, are slight different. Nothing has been brought to our notice to show that the Government had before it any such fresh material in the shape of further representation or otherwise or that the representative of the workmen had been heard orally, before it (the Government proceeded to make the impugned order of reference. On the other hand, by virtue of the writ issued by this Court in WP No. 203 68 the Government was virtually relegated to a position which it occupied when it proceeded" to examine for the first time the question of making reference

The, after referring to a few more decision of the Supreme Court, and in particular to *Western India Match Co. Ltd. v. Its, Workmen* 1970 II Ilj 236 the learned Judges dismissed the appeal construing the reference as if it was a reference made for the first time and holding that in such a situation there was no violation of the principle of natural justice on account of the Government not hearing the appellant before making the impugned order of reference. I have referred in some detail to the observations of the Division Bench in *Kirloskar Electric Co's case* for the reason that the distinction subsequently drawn between the facts of that case and *ITI's case* in the latter case will give us a clue to understand the ratio enunciated in the *ITI case*. The learned Judges in *ITI's case* were not unaware that an earlier decision of this Court by a Bench of equal strength bound them. And that if the facts were not distinguishable and still the earlier case, in their view, required reconsideration the learned Judges would have sought for a reference of the question to a larger Bench. But they felt that course was not necessary in view of the fact that the ratio enunciated in *Kirloskar Electric Co's case* was clearly distinguishable from the facts of the case with which they were dealing. In this connection *Puttaswamy, J.*, one of the learned Judges constituting the bench in *ITI's case* has been pleased to observe as follows at para-19.

"In *WA. No. 164 of 1974* the Division Bench of this Court while affirming the decision of *Venkataramiah, J.*, in our considered view, has decided the case primarily on the facts of the case without considering it necessary to examine the principles enunciated by *Venkataramiah J.* We are of the view, the Division Bench on the very peculiar facts of that case, viz., that first the order of the Government refusing to make a reference had been quashed by this Court and the Govt. had been directed to reconsider, the matter by a mandamus, on the basis of which the reference by Government thereon was construed as if the reference was made by the Government for the first time has affirmed the decisions of *Venkataramiah, J.* We are of the view, the Division Bench has not laid down that the principle of *audi alteram partem* has no application to a case

where the Government once refuses to make a reference and then makes a reference after affording an opportunity to only one of the parties and not both the parties as has happened in the case before us. In our view, the decision of the Division Bench in appeal cannot be read as suggested by the learned counsel for the respondents and, therefore, we hold that there was no justification to refer the questions that arise for our determination to a Full Bench of our High Court."

The learned counsel appearing for the 5th respondent pointedly drew my attention to the above passage and argued that the ratio enunciated in ITI's case was that if the Government, after hearing the parties concerned, once refuses to make a reference under S. 10 of the Act of 1947, but decides to refer the very dispute subsequently, without hearing both the sides but hearing only one side, such a reference would be one made in violation of the principle of fair hearing. According to him it is only to such a case the ratio enunciated in ITI's case applies (even in the case of a reference made under S. 10 of the Act of 1947) and not to a first reference, though made without hearing both the sides and hearing only one side. He further argued that in view of the fact that the reference in this case (the case with which we are dealing), being the first reference, even if the ratio of any decided case involving the construction of S. 10 of the Act of 1947 is held to be applicable to this matter, the ruling of the Division Bench of this Court in W.A. No. 164 of 1974 (Kirkoskar Electric Co. should be held to govern this case. There is considerable force, in this submission. We have to understand the other observations made in ITI's case placing reliance on Mohinder Singh Gill's case and on the question as to what amounts to entailment of a civil consequence on a given case, have all to be understood in this background, and, in particular, in the light of the observations of their Lordships in ITI's case at para-19 (extracted above) The ratio or the principle enunciated in ITI's case finds a place at para-19 and the observations elsewhere made meeting the arguments advanced by the learned counsel on either side have to be understood only from this background. This is particularly so if we further note the observations of their Lordships in ITI's case at para-23. Their Lordships note the earlier decision of the Government refusing to make a reference and that on that basis the management proceeded to make its own arrangement to fill up the vacant posts and to the predicament to which the management had been put to by the reference subsequently made. No doubt that in addition to this the learned Judges have also observed that the management would be put to difficulties, harassment, etc., by being called upon to face an enquiry in the Labour Court and taking all the aforesaid facts together their Lordships have observed as follows at para-23.

"On these facts, an order of reference made by the Government after having once rejected to make a reference, will undoubtedly have civil consequences on the petitioner"

We are dealing with a case in which apart from there being distinguishable

features referred to above, the reference is one made for the first time. No second reference in the instance case as in ITI's case, i.e., the Government first refusing to make a reference after hearing both the sides and then deciding to refer after hearing only the alleged employee. Thus, the facts in these cases, for the reasons stated above, are clearly distinguishable and the ratio enunciated in ITI's case are not applicable to the facts of these cases.

17. In Mohinder Singh Gill's case at the Parliamentary Elections held in 1977, at a particular constituency, a poll had taken place. At the stage of counting, and when it was more than half way through, the Election Commission ordered for a re-poll on the ground that in certain segments of that Parliamentary constituency some votes had been destroyed by violence etc. The Commissioner's order was in exercise of the powers vested in it under Art. 324 of the Constitution read with S. 153 of the representation of the People Act, 1951. Amongst other grounds urged attacking the notification of the Election Commission cancelling the poll, one of the grounds of attack was that the decision to issue the notification having been arrived at without hearing the appellant before their Lordships, who was one of the principal contestants in that poll, was void having been arrived at in violation of one of the basic postulates of the principles of natural justice. It was argued on behalf of the respondents that the appellant had not acquired any legal right as the results had not been declared nor had he suffered any civil consequences. Noting these submissions the Court observes as follows (at para-50);

"We will now zero-in on the crucial issue of natural justice vis a vis Art. 324. Where the function is so exercised that a candidate is substantially prejudiced even if he has not acquired a legal right nor suffered "civil consequences" whatever that may be."

Then, after referring to the wide import attached to the term "civil consequences" their Lordships refer to the definition of that term as found in Black's Legal Dictionary (4th Edn.). Therein reference is made to what are called "civil rights" and what that term, in the context of a citizen's right in a Democracy, may mean. Their Lordships extract the definition of the term "civil right" as found in Black's Legal Dictionary which reads as follows : (at page-876)

"Civil Rights are such as belong to every citizen of the State or country or in a wider sense, to all its inhabitants, and are not connected with organisation or administration of Government. They include the rights of property, marriage protection by the laws, freedom of contract, trial by jury etc.. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to the citizens of the United States by the 13th and 14th amendments to the Constitution, and by various Acts of Congress made in pursuance thereof."

After making a reference, as above, and dealing with the rights of the appellant

to challenge the order because of the consequences affecting him by the cancellation of the poll the Court observes as follows (at para-65) :

"The interest of a candidate at an election of Parliament regulated by the Constitution and the laws comes within this gravitational orbit. The most valuable right in a democratic policy is the little man's little pencil-marking, assenting or dissenting, called his vote. A democratic right, if denied inflicts civil consequences. Likewise, the little man's right, in a representative system of Government, to rise to Prime Ministership or Presidentship by use of the right to be a candidate cannot be washed away by calling it of no civil moment. If civics mean any thing to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catch words."

It may be noted that their Lordships, at paras 66 and 67, refer to a few decision of the Supreme Court including the one in Union of India v. J. S. Sinha approving the observations of the Court made therein. My reference to Mohinder Singh Gil's case was to find out what implications the observations of the Supreme Court made therein touching the questions of Civil consequences may have on the point now under consideration by us Having carefully gone through that decision I am of the view that it cannot be said that the reference made by the State Government results in such civil consequences as to attract the principle of fair hearing by the Government before making the said reference.

18. Thus, looked at from any angle, I am of the view that the impugned order of reference made by the Government is not liable to be interfered with.

19. Therefore, Rule not issued, and the petitions are dismissed.