
(1969) 02 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 445 of 1966

Nowrozabad Colliery Mazdoor Sangh

APPELLANT

Vs

F. Jeejeebhoy and Another

RESPONDENT

Date of Decision : 17-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 115

Industrial Disputes Act, 1947 — Section 10, 10A

Citation : AIR 1970 MP 63 : (1970) 20 FLR 284 : (1974) ILR (MP) 208 : (1969) JLJ 1095

Hon'ble Judges : Shiv Dayal Shrivastava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : S.K. Pachori, for the Appellant; R.S. Dabir and I.M. Nanawati, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.—This is a petition under Articles 226 and 227 of the Constitution for a writ of certiorari to quash and set aside the award made u/s 10A of the Industrial Disputes Act (hereinafter called the "Act") by Shri F. Jeejeebhoy, the sole arbitrator (respondent No. 1), which award was published in the Gazette of India, Part II, Section 3(2) dated June 11, 1966.

2. The petitioner, Nowrozabad Colliery Mazdoor Sangh is a Trade Union, registered under the Trade Unions Act. Respondent No. 2, the Associated Cement Co. Ltd., Nowrozabad Colliery, (hereinafter called the "Company"), is a company incorporated under the Companies Act. The Company installed a coal washing plant (shortly called the "washery") for the purpose of washing coal raised from its Nowrozabad and Kotma Collieries and commissioned the same some time in August, 1960.

3. It appears that a notice dated March 12, 1963, was published by the Company to the effect that the washery would run without the assistance of 18 workmen

named therein (Ishwardas and 9 others, who are concerned with this petition, and Ramadhar and 7 others, who are concerned with M.P. No. 588 of 1966, which is being decided simultaneously). On May 6, 1963, all the 18 workmen filed a complaint u/s 33A (complaint No. 9/1963) before the Central Government Industrial Tribunal, Bombay, (hereinafter referred to, for the sake of brevity, as CGIT, Bombay). On September 30, 1963, Ishwardas and 9 others (who will hereinafter be called "workmen") were discharged. On October 9, 1963, the workmen filed a complaint u/s 33A of the Act before the CGIT, Bombay.

4. On January 18, 1965, a joint application was filed before the CGIT, Bombay, for withdrawing various references and complaints, which were pending before it, with a view to refer the disputes to arbitration of Shri Jeejeebhoy, Ex-president, Labour Appellate Tribunal of India, Bombay, u/s 10A of the Act. On January 27, 1965, the CGIT, Bombay, made an "award" disposing of these disputes pending before it "as withdrawn in terms recorded in the annexure hereto, which shall form part of this award". This "award" was published by the Central Government in the Gazette of India, Part II, Section 3(2) dated February 13, 1965. On January 28, 1965, an agreement was entered into between the parties to refer to the arbitration of the said Shri F. Jeejeebhoy, u/s 10A of the Act, their dispute whether the complaints were maintainable.

5. On June 2, 1965, an arrangement was arrived at between the parties that in case the references are rejected on the preliminary contention that the complaints u/s 33A are not maintainable, the company would be forthwith entitled to execute ejectment decrees. But, if the parties agree that the arbitrator should also decide the merits of the disputes even if the complaints are not maintainable, the agreement not to execute ejectment decrees would continue until an award on merits of the dispute is given by the arbitrator and published by the Government. On November 3, 1965, an application was made to the arbitrator to decide their dispute on merits as well. On the same day, a copy of this agreement was sent to the Central Government for publication. This was followed by a reminder dated February 11, 1966 from respondent No. 2. A reply (undated) was received from the Central Government returning the agreement, as it was not in the prescribed form. On February 21, 1966, an agreement was drawn up afresh in the prescribed form, referring the dispute on merits to the arbitration of Shri F. Jeejeebhoy. On March 12, 1966, this agreement was published by the Central Government. On May 24, 1966, the arbitrator made his award.

6. Aggrieved by this award, this petition was filed for a writ of certiorari.

7. Shri Nanavati, learned counsel for the Company, (respondent No. 2), raised a preliminary objection that an arbitrator, appointed u/s 10A of the Act, is not a Tribunal, nor a statutory arbitrator but he is a private arbitrator of the choice of the parties, so that he is not amenable to the writ jurisdiction under Article 226 or 227 of the Constitution.

8. It is settled law that an arbitrator, appointed u/s 10A of the Act, is not a Tribunal. Per *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd.*, Bombay, . In that case, their Lordships were dealing with the question whether an appeal lies to the Supreme Court under Article 136 of the Constitution from an award of a Section 10A arbitrator.

9. On the further question whether an arbitrator appointed u/s 10A of the Act, is a statutory arbitrator, Shri Nanavati relies on *R. v. Dispute Committee of Dental Technicians* 1953-1 All E. R. 327. In that case, there was a motion for an order of certiorari to quash an order made by the Disputes Committee of the National Joint Council for the Craft of Dental Technicians declaring that the employers of an infant apprentice were entitled to dismiss him from their employment and for an order of prohibition to prohibit the committee from further proceeding in the arbitration between the employers and the infant apprentice. Lord Goddard, C. J., said:--

"That is simply a reference to an arbitrator, and I have never heard of certiorari or prohibition going to an arbitrator. Arbitration is a very old remedy in English Law, but in all the centuries that have passed since the decisions of English Courts first began there is no trace of an arbitrator being controlled by this Court by writ or either prohibition or certiorari. The bodies to which in modern times the remedies of these prerogative writs have been applied are all statutory bodies on whom Parliament has conferred statutory powers and duties the exercise of which may lead to the detriment of subjects as, for instance, where a statute gives a certain body power for the compulsory acquisition of land and an arbitrator is set up by Parliament to assess the compensation, and it is essential that the Courts should be able to control the exercise of the statutory jurisdiction within the limits imposed by Parliament. There Is no instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom, by statute, the parties must resort".

That, undoubtedly, is the law in England and there it is well established that a writ of certiorari will lie against statutory arbitrators. See also *R. v. Powell* (1925) 1 K. B. 641.

10. An examination of the relevant provisions of the Act shows that the proceedings before a Section 10A arbitrator are quasi judicial proceedings and that the arbitrator must function within the limits of his powers as defined by the Act and the Rules. Section 10A was inserted by Act No. 36 of 1955 to enable the parties to voluntarily refer their disputes to arbitration. While u/s 10, reference is compulsory, u/s 10A, the reference is entirely voluntary. Sub-section (1) of Section 10A provides that the employer and the employee may agree to refer any industrial dispute to arbitration of any person or persons of their choice. The sub-section conspicuously mentions the presiding officer of a Labour Court or Tribunal or National Tribunal also to be competent arbitrators. Sub-section (1-A)

requires the agreement to provide for the appointment of an umpire in case the reference is to an even number of arbitrators, and it is also a statutory requirement of such an agreement that the award of the umpire shall prevail. Sub-section (2) further makes it mandatory that the agreement shall be in writing and shall be in such form and manner as may be prescribed. Under Sub-section (3) a copy of the arbitration agreement has to be forwarded to the Government and then the Government has to publish it in the official gazette within one month from the date of its receipt. Under Sub-section (3-A), employers and workmen, who are not initially made parties to arbitration agreement, but are concerned in the dispute are also given an opportunity of presenting their case before the arbitrator. Sub-section (4) imposes a duty on the arbitrator to investigate the dispute and submit his award to the Government, Sub-section (4-A) authorises the Government to prohibit continuance of any strike or lock-out in connection with such dispute.

Section 2(b) of the Act defines "award" so as to include an award u/s 10A. Section 17 enacts that an award must be published by the Government within the prescribed time, and Sub-section (2) of that Section gives finality to the award so published. u/s 17A, read with Section 18, the award becomes enforceable and binding on the parties on the expiry of 30 days from the date of its publication. Section 19(3) prescribes the period of operation of the award, and under Sub-section (6) of that Section, the award continues to be binding on the parties until a notice is given by a party to the other intimating its intention to terminate the award and two months thereafter expire. Under Sub-section (7) of that Section, a notice of such termination, in order to be effective, is required to be given by a party representing the majority of persons bound by the award. Further, Section 21 provides for keeping confidential certain matters before the arbitrator, and Section 30 provides for penalty in case of wilful disclosure of confidential information. Section 29 makes it penal to commit the breach of any term of the award. Section 31C provides for a summary remedy for recovery of dues under the award. Section 36 confers upon the workmen the right to be represented in proceedings before the arbitrator. Section 36A enables the Government to make a reference to the authorities with regard to interpretation of any provision of an award.

11. It is remarkable that Sub-section (5) of Section 10A completely excludes the application of the Arbitration Act to an arbitration under this Section. Therefore, it appears that there is no other appropriate and efficacious remedy against an award made u/s 10A. This provision makes it abundantly clear that an arbitrator appointed under that Section is not a private arbitrator in the ordinary sense of the term.

12. From all these provisions of the Industrial Disputes Act, it becomes quite clear that the appointment of an arbitrator u/s 10A is given a statutory recognition; that the agreement to refer an industrial dispute to him has to be in writing and in the prescribed form; that he must conform to the requirements

laid down in the Act and the Rules framed thereunder; that the rights and liabilities of the parties, who refer their dispute u/s 10A, are governed by the provisions of the Act; that the arbitrator is clothed with quasi-judicial powers and his proceedings are regulated by the rules and procedure; that a duty is cast on the arbitrator to submit his award to the Government; and that a duty is cast on the Government to publish the award within the prescribed period. We are deeply of the opinion that an arbitration u/s 10A has all the essential attributes of a statutory arbitration u/s 10 of the Act. In *Rex v. Electricity Commissioners*, (1924) 1 K. B. 171, Lord Atkin referred to the genesis and the history of the writs of prohibition and certiorari and held that whenever any body of persons, having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, acts in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division.

See also *R. v. Northumberland Tribunal* (1951) 1 All. E. R. 268. In *Rohtas Industries Staff Union and Others Vs. State of Bihar and Others*, , the view taken was that an arbitrator appointed u/s 10A of the Act, is a statutory arbitrator and, therefore, a certiorari can be issued to quash his award. It was argued that in view of Lord Goddard's unequivocal remark (supra) that a statutory arbitrator is a person to whom, by statute, the parties must resort, an arbitrator u/s 10A of the Act cannot be held to be a statutory arbitrator in that sense, because an arbitration under that Section is voluntary, by choice of the parties, and they are not bound to resort to such arbitration unlike the compulsory reference u/s 10. Assuming that argument to be correct, that is not the end of the matter. Article 226 of our Constitution gives wide powers to the High Court to issue directions, orders or writs to any person or authority, and is not conditioned or limited by the requirement that writs can be issued only against orders of Courts or Tribunals. It is true that the expression "any person" does not mean any and every individual. In *Air Corporations Employees' Union and Another Vs. D.C. Vyas and Others*, , it was held that the High Court has, under Article 227 of the Constitution, powers of superintendence over an arbitrator, who functions u/s 10A of the Act and that the orders passed by such an arbitrator, who acts as a quasi-judicial body, are capable of being corrected by a writ of certiorari, provided there is an error of law apparent on the face of the record.

In *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, , it is true, their Lordships were not considering precisely the question whether a writ lies against the award of an arbitrator u/s 10A of the Act, yet, the following observations fortify our conclusions:--

"Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of Courts or Tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority,

including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226. That is why the argument that a writ may lie against an award made by such an arbitrator does not materially assist the appellants' case that the arbitrator in question is a tribunal under Article 136".

It -was held in K.P. Singh v. S.K. Gokhale 1968 M.P.W.R. 733= (1969 MP. I. C. 725) that if the High Court finds that the requisite procedure as prescribed by the Act was not followed so as to confer necessary jurisdiction on the arbitrator to proceed with the adjudication of the dispute referred to him u/s 10A, it can, in exercise of prerogative powers issue the necessary writs.

13. Shri Nanavati relies on three decisions, where a contrary view is taken. In A. T. E. M. Employees' Association V. Musaliar Industries (1961) 1MP L. J. 81 (Ker), it was observed that the arbitration u/s 10A itself and the choice of the arbitrator are left to the will of the parties and an arbitrator so appointed does not fulfil any of the characteristics of a statutory arbitrator as laid down in 1953 1 All. E. R. 327 (supra). In A. T. E. M. Employees' Association v. Musaliar Industries (1962) 2 Lab. L. J. 317 (Ker), stress was laid on the heading of Section 10A "voluntary reference of dispute to arbitration" and on that the arbitrator derives his jurisdiction from a contract. Both these decisions were decided before the decision in The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, . For the reasons already stated, we are unable to follow these decisions. In P. Koru Vs. Standard Tile and Clay Works (P) Ltd. and Another, they have been held to be no longer good law. In Anglo-American Tea Trading Co. v. Its Workmen 1963-2 MP. L. J. 752 (Mad), the argument advanced before the Madras High Court was that since the authority of an arbitrator appointed u/s 10A does not depend on any statutory jurisdiction and he is a private tribunal, set up by an agreement no writ of certiorari or prohibition could be Issued. But that was not the basis on which the petition was dismissed. It appears to us that that point was not seriously considered and the petition was dismissed on its merits.

14. As a result of the above discussion, we are of the opinion that although an arbitrator appointed u/s 10A is neither a Tribunal nor is he a statutory arbitrator within the definition given by Lord Goddard, C. J. in 1953-1 All. E. R. 327 (supra), yet having regard to the statutory provisions recapitulated above, an arbitration u/s 10A of the Act has all the attributes of a statutory arbitration u/s 10. The appointment of an arbitrator u/s 10A depends on a mutual agreement of the parties and the choice of the arbitrator is also entirely theirs, but the rest is regulated by the Act and the statutory rules. The proceedings before him are quasi-judicial in nature. He has to function within the limits of his powers as defined by the Act and the statutory rules. Therefore, he is a statutory arbitrator in this sense. He is a "person" within the meaning of Article 226. He is, therefore, amenable to the writ jurisdiction of the High Court and a certiorari will

issue to quash his award on well settled principles; for instance, where he acts without jurisdiction or in excess of jurisdiction, or where there is an error apparent on the face of the record, or there is violation of the principles of natural justice.

15. The preliminary objection is rejected.

16. The petitioner's first contention is that the arbitration u/s 10A of the Act was illegal and void inasmuch as the dispute had already been referred to the Tribunal u/s 10 of the Act. It is true that the dispute had already been referred u/s 10 to the CGIT, Bombay, but it is quite clear from the facts stated above that by consent of the parties and with the permission of the Tribunal, the reference was withdrawn. Once a reference is validly withdrawn, it cannot be said that it is pending. A withdrawal of the reference tantamounts to its having not been made at all, so that it cannot be said that the condition prescribed by the Act "at any time before a dispute has been referred u/s 10" was not fulfilled.

17. It is then argued for the petitioner that the Tribunal had no jurisdiction to make the award, dated January 27, 1965, permitting withdrawal of the reference. The argument is that once a reference is made u/s 10, the Tribunal is bound to decide it on the merits and it has no jurisdiction to allow the parties to withdraw the reference. Reliance is placed on *Sital Sukhram v. Central Government Industrial Tribunal* 1969 MP L J 33 at p. 35: (AIR 1969 Madh. Pra. 200 at p. 203). In our opinion, that decision does not support the petitioner's contention. All that has been held there is that the Tribunal cannot abdicate its duties of adjudicating upon the dispute and when there is a compromise arrived at between the parties, the Tribunal cannot deal with it like a settlement between the parties to a suit, which may be recorded under Order 23, Rule 3, Civil Procedure Code.

In that case, it has been further observed as follows:--

"Nevertheless it can adopt the compromise entered into by these parties as the foundation of its award after considering whether it is a fair and just settlement of the disputes".

18. In *The State of Bihar Vs. D.N. Ganguly and Others*, , their Lordships said:--

"It is true that the Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of Order XXIII, Rule 3, of the Code of Civil Procedure. But it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary objects of this Act..... There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an

award in terms of the settlement between the parties".

On the basis of this authority, we are of the view that if the Tribunal can act on a compromise, there is nothing in the Act to exclude this particular kind of compromise under which the parties amicably decide upon the machinery and the arbitrator of their own choice for resolving their differences, and seek the sanction of the Tribunal for the withdrawal on such a basis. No doubt, the Tribunal must be satisfied before such a joint request is accepted that there is nothing unfair, improper or unjust. The view that we take was also taken In Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum, . In the present case, several disputes had been pending between the parties and there was an agreement to refer all of them to the private arbitration of Shri F. Jeejeebhoy. He is an ex-President of the Labour Appellate Tribunal of India. If the parties desired to have the benefit of his learning and experience, it cannot be said that their compromise was unfair or unjust. The Tribunal, in its award dated January 27, 1965, clearly said:--

"I am satisfied that it would be in the Interest of industrial peace to allow the application of the parties."

Nothing has been suggested to us to show how the compromise under which sanction was sought to withdraw the reference from the Tribunal, was unfair or unjust.

19. For yet another reason, the petitioner's contention must be rejected. It will be patent enough from the facts, which we are going to state in connection with the petitioner's next contention, that the petitioner submitted to the jurisdiction of the arbitration u/s 10A and took part in the proceedings without objection on the ground that the arbitrator had no jurisdiction. See Pannalal Binjraj Vs. Union of india (UOI), .

20. The petitioner's next contention Es that the award must be quashed for want of jurisdiction inasmuch as the dispute on merits was not referred to the arbitrator; what was referred was merely the question whether the complaints were maintainable. It is averred in paragraph 25 of the petition that at the hearing before the first respondent, it was urged on behalf of the petitioner that the address was limited to the short question of maintainability of the complaints u/s 10A of the Industrial Disputes Act and it was further urged that if necessity arose for going into the question of merits of the removal from the service, the matter would have to be investigated afresh by bringing to the notice of the respective workmen individually the allegations and the charges that led to their removal. This averment was emphatically denied in the return and it has been attacked as "factually false" to the knowledge of the petitioner-union and its representative who had sworn the petition. It was emphasised that the Union had not only led oral and documentary evidence on the merits of the discharge orders, but had addressed detailed arguments for several days, contending on their part that the discharge of 10 workmen was not justified on merits. An

affidavit was also filed by the arbitrator, where he says that he is not interested in the result of this petition, but he has strongly controverted the averment made in paragraph 25 of the petition and has asserted that the parties had not limited their address or arguments only to the technical question of maintainability of the complaints u/s 33A, but had led evidence as well as addressed their arguments on the merits of the discharge of the workmen concerned in the dispute.

In his affidavit, Shri F. Jeejeebhoy has clarified the position thus:--

"At first on 3rd November, 1965, an Arbitration Agreement was entered Into by the parties appointing me to decide the merits of the dispute and that Agreement was accepted by me, and since the said Agreement was returned by the Central Government in order to comply with the amended prescribed form, the parties signed before me another Arbitration Agreement dated 21-2-1966 which was also accepted by me at their request."

These facts are also asserted in the return filed by the 2nd respondent. No rejoinder was filed by the petitioner to deny these facts. Govindlal Govil, Labour Relations Adviser to the Company has filed with his affidavit, a carbon copy of the application which was filed before the arbitrator on November 3, 1965. It bears the signatures of the representatives of the parties, and also of the arbitrator, along with the words "I agree" written by him. Thus, it is quite clear that as back as on November 3, 1965, the parties referred to the "arbitration of Shri F. Jeejeebhoy their dispute on merits: "Whether the discharge of the said 10 complainants from the Company's service is justified on merits and, if not, to what relief, if any, they are entitled, so that the Industrial disputes between the parties arising out of their dispute may finally end". Shri Nanavati, learned counsel for the 2nd respondent, makes an unequivocal statement at the Bar that he himself appeared before the arbitrator and that voluminous evidence was produced by the petitioner-Union and recorded by the arbitrator on the merits of the dispute. We accept the affidavit of the arbitrator and Shri Nanavati's statement. We, therefore, hold that the dispute which was referred to the arbitration of Shri F. Jeejeebhoy was not limited to the question of maintainability of the complaints but also the dispute whether the discharge was justified on merits.

21. No other point was urged.

22. This petition is dismissed with costs. Counsel's fee Rs. 150/-.

Bhave, J.

23. I entirely agree with the Order proposed by my learned brother Shiv Dayal, J. that the petition may be dismissed with costs. I would, however, like to add a few words more.

24. There is another reason, in my opinion, why this petition should be dismissed. It is clear from the facts stated by both the parties that a number of

disputes between the same parties were referred to the Bombay Tribunal under various orders of reference by the Government. During the pendency of those references, the parties with a view to establish goodwill and industrial peace entered into a "package deal" under which it was agreed between the parties that all the disputes should be referred to the arbitration of Shri Jeejeebhoy, ex-President, Labour Appellate Tribunal of India, Bombay, u/s 10A of the Industrial Disputes Act. Accordingly, applications were filed before the Bombay Tribunal and awards in terms of the agreement were obtained from the Tribunal in all those matters. Subsequently, all those disputes were referred to Shri Jeejeebhoy as was agreed to between the parties. Out of the various matters, awards on two matters only are being challenged before us on the ground that Shri Jeejeebhoy had no jurisdiction to decide the disputes as a reference was already made u/s 10 to a Tribunal constituted under the Industrial Disputes Act. This the petitioner cannot be allowed to do. The principle of estoppel is clearly attracted in such a case. In any case, this Court must be adverse to exercise its special jurisdiction under Article 226 of the Constitution in such a case. In *Pannalal Binjraj Vs. Union of India (UOI)*, it was held by their Lordships of the Supreme Court that the petitioners before them, were not entitled to invoke the jurisdiction of the Supreme Court under Article 32 of the Constitution as the conduct of the petitioners in submitting to the jurisdiction of the Income Tax Officer, to whom their cases had been transferred, would disentitle them to any relief at the hands of the Supreme Court on the ground that the said Income Tax Officer had no jurisdiction to proceed with their assessment. In other words, their Lordships of the Supreme Court held that a party invoking the jurisdiction of a tribunal or submitting to it without protest cannot be allowed to urge that the tribunal had no jurisdiction. It was, however, urged before us that this principle is applicable only when there is latent want of jurisdiction in the tribunal and not to a case where there is patent want of jurisdiction. Our attention was invited to the discussion by Seervai in his book "Constitutional Law of India" (1957 Edn.) at pages 645 and 646. The case of *Pannalal Binjraj Vs. Union of India (UOI)*, has been cited by Seervai with a comment that the observations of the Supreme Court were made without reference to the question whether there was patent lack of jurisdiction or not. The learned author thus desires to suggest that the case of the Supreme Court may be treated to be one of latent want of jurisdiction. Whatever that may be, it is sufficient to observe that the Supreme Court has not confined its observations to any one kind of case only. In this case, however, that question does not arise so much as, in my opinion, the principle of estoppel is clearly attracted that I heavily rely on it for rejecting the petition.

25. On merits also, there is no substance in the petition. The main contention of the petitioners is that a voluntary reference u/s 10A of the Industrial Disputes Act can only be made "at any time before the dispute has been referred u/s 10". In other words, the right conferred u/s 10A cannot be exercised once a reference is made by the Government u/s 10 and the only thing left to the parties to the dispute is to abide by the award given on reference made by the Government. In

The State of Bihar Vs. D.N. Ganguly and Others, , their Lordships pointed out that even when a reference was made u/s 10, the parties to the dispute were not precluded from arriving at a private settlement of the dispute and the proper course for the Tribunal in such a case was to make an award in terms of the settlement arrived at between the parties. A situation slightly different came for consideration by their Lordships of the Supreme Court in The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, .

In that case, on reference u/s 10 the Tribunal made an award and sent the same to Government for its publication u/s 17 of the Act. After the award was given, but before its publication, the parties to the dispute came to a settlement and sent a joint letter to the Government not to publish the award. The Government expressed their inability to accede to the request of the parties as they thought that the provisions of Section 17 of the Act were mandatory and the Government were bound to publish the award. The parties, therefore, moved the High Court under Article 226 of the Constitution for a writ of mandamus restraining the Government from publishing the award. The matter ultimately was taken to the Supreme Court. Their Lordships held that the provisions of Sec. 17 of the Act were mandatory. It was, however, pointed out that the settlement arrived at between the parties became binding on them u/s 18(1) of the Act and so was the effect of an award published u/s 17. If the award was allowed to be published, two conflicting but equally binding settlements would come into existence and it was, therefore, the duty of the Government to resolve the conflict by not publishing the award. Preference was given by their Lordships of the Supreme Court to the private settlement as against the settlement on adjudication because that was more conducive to industrial peace.

Their Lordships further observed:

"The reference to the tribunal is for the purpose of resolving the dispute that may have arisen between employer and their workmen. Where a settlement is arrived at between the parties to dispute before the tribunal after the award has been submitted to Government but before Its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it"

What I wish to emphasise is that both the decisions of the Supreme Court clearly indicate that reference made by Government u/s 10 of the Act does not take away the right of the parties to settle their dispute in the manner they like best and the whole purpose of the Industrial Disputes Act being to establish industrial peace and harmony, preference must be given to the settlement arrived at between the parties as against an award given on reference. Now, settlement of a dispute may include the mode of settlement of the dispute as well. It, therefore, follows that if the parties before a tribunal decide to settle their dispute by referring the same to the arbitrator of their own choice, that

settlement the tribunal is bound to accept as is clearly laid down by their Lordships in *The State of Bihar Vs. D.N. Ganguly and Others*, . This is exactly what was done by the Bombay Tribunal. The effect of the agreement reached between the parties to refer their dispute to the private arbitrator was to make the proceedings before the Tribunal infructuous. This is the effect of the decision of their Lordships in *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, . In this view of the matter, it must be held that no proceeding was pending before the Tribunal when the reference u/s 10A was made to the arbitrator; firstly, because the Tribunal had given its award in terms of the agreement reached between the parties; and, secondly, because the proceedings before the Tribunal had become infructuous in view of the agreement reached between the parties. The submission of the petitioners that no reference to arbitrator could be made after the reference u/s 10 was made is, therefore, without any substance. The petition is therefore dismissed with costs. Hearing fee Rs. 150/-.

BY THE COURT

26. This petition is dismissed with costs. Counsel's fee Rs. 150/-.