

(1952) 12 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 35 of 1952

Prabhakar Gerald Walter

APPELLANT

Vs

The Chief Secretary and Others

RESPONDENT

Date of Decision : 11-12-1952

Acts Referred:

Companies Act, 1956 — Section 26
Constitution of India, 1950 — Article 226
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 36
Industrial Disputes Act, 1947 — Section 1, 10, 10(1), 12, 12(1)
Trade Unions (Amendment) Act, 1947 — Section 4
Trade Unions Act, 1926 — Section 28A, 28B, 28C, 28D, 28E
Travancore Companies Act, 1914 — Section 28

Citation : (1952) 12 KL CK 0002

Hon'ble Judges : Subramania Iyer, J

Bench : Single Bench

Advocate : K.P. Abraham, for the Appellant; G. Balagangadharan Nair, for Counter Petitioner No. 3, Govt. Pleader, for the Appearing Parties

Judgement

Subramania Iyer, J.—This is an application presented by the South India Cashew Nut Manufacturers' Association, represented by its Honorary Secretary Prabhakar Gerald Walter, under Article 226 of the Constitution of India praying that

for the reasons stated in the accompanying affidavit the Court be pleased to issue a writ of certiorari for removing the order L2-8772/50 dated 24-10-1951 passed by Government of Travancore-Couhin referring an industrial dispute to the second counter-Petitioner for quashing the same and for such other appropriate relief as the Court may deem fit.

There are three Respondents to this application who are (1) the State of Travancore-Cochin represented by the Chief Secretary to Govt. (2) The Industrial Tribunal, Alleppey and (3) T.K. Divakaran, Convener, Ad Hoc Committee, the All India (sic) Cashewnut Factory Workers' Federation.

2. The order sought to be removed to and quashed by this Court reads thus:

Development Department, (Labour Section). Industrial Dispute - Employers and employees -Cashewnut Industry - adjudication of.

Read Letter 1. R3-2711/51 dated 11-10-51 from the Labour Commissioner.

Order L2-8772/50 dated 24-10-1951.

A copy of the order of even number and date referring the above dispute for adjudication is forwarded to the Superintendent Government Press for publication in the Gazette. The Superintendent, Government Press, will supply half a dozen copies of - the order each to the Labour section, Secretariat, and to the Labour Commissioner.

Copies of the order are also forwarded to the Industrial Tribunal, Alleppey, Labour Commissioner, Employers concerned and to the All Kerala Cashewnut Factory Workers Federation, Quilon.

(By Order of His Highness the Rajpramukh)

Sd/- Dy. Secretary to Govt.

To

1. The Superintendent, Government Press, Trivandrum.
2. The Industrial Tribunal, Alleppey.
3. The Labour Commissioner.
4. The President, All Kerala Cashewnut Factory Workers" Federation, Quilon.
5. Janab A. Thangalkunju Musaliar, Messrs. A. Thangalkunju Musaliar and Sons, Cashew Exporters, H.O. Kilikollur, Quilon.
6. Janab A. Abdul Kadir Musaliar, Messrs. A Abdul Kadir Musaliar and Sons, Cashew Exporters, Kilikolloor, Quilon.
7. Janab K. Ebrahim Kutty, Messrs. Hidayathul Cashew Company, Cashew exporters, H.O. Kilikolloor, Quilon.
8. Janab K. Mytheen Kunju, Messrs. K. Mytheen Kunju and Soni, Ltd., Cashew Exporters, Asra-mam, Quilon.
9. Janab M. Shamsuddin, Messrs. Indo-Ameri-can evading Co., Cashew Exporters, H. Q Pazhayattumkuzhy, Mayyanadu.
10. Janab A. Mohammed Kunju, Messrs. A Muhammed Kunju, Cashew Factory, Cashew Exporters, Kilikolloor, Quilon.
11. Sri K. Kesavan, Messrs. Shanmukavilasorr Cashew Factory, Cashew Exporters, Kilikollur, Mangadu.

12. Sri P. Krishna Pillai, Messrs. Dhanalakshmi Vilasam Cashew Factory, Cashew Exporter, H.O. Quilon.
13. Sri M.P. Kesavan, Messrs. M.P. Kesavan and Sons, Cashew Exporters, H.O. Kilikollur, Quilon.
14. Sri M.P. Govindan, Messrs. M.P. Govindaa and Sons, Cashew Exporters, H.O. Kilikollur, Quilon.
15. Sri Gangadharan, Messrs. K. Gangadharan and Sons, Cashew Exporters Keralapuram, Kundara.
16. Sri E.C. Govindan Asan, Messrs. E.C. Govindan Asan and Sons, Cashew Exporters, H.O. Ayathil, Quilon.
17. Messrs. N.A.N.R. Cashew, Factory, Cashew Exporter, H.O. Quilon.
18. Sri K. Nam Pillai, Cashew Merchant, Mukhathala, Quilon.
19. Sri R. Govinda Pillai, Messrs. R. Govinda. Pillai and Sons, Cashew Exporters, Kilikollur, Quilon.
20. Sri V. Nilakanta Pillai, Cashew Merchant, Chandanathope, Mangad.
21. Sri V. Kumaran, Messrs. Kumaravilasoni Cashewnut Factory, Ezhukone, Kottarakara.
22. Sri P.C. John, Messrs. P.C. John and Sons, Cashew Merchants, Puthucaud.
23. Messrs. Padma Cashew Factory, Kilikollur, Quilon.
24. Messrs. Ganga and Bros., Cashew Exporters, Quilon.
25. Messrs. Peirce Leslie and Co., Ltd., Kundara.
26. Messrs. Oriental Exporters, Cutcherry Road, Quilon.
27. Messrs. Ideal Cashew Exprot Company Pattathanam, Quilon.
28. Messrs. Renown Cashew Works, Quilon.
29. Messrs. Southern India Cashew Company, H.O. Kundara.
30. Messrs. N. Sundaraeswaran, Cashew Exporters, Quilon.
31. Messrs. South India Corporation Ltd., Cashew Exporters, Kottiyam.
32. Messrs. Swastic Produce Co. Ltd., Cashew Exporters, Quilon.
33. Messrs. Mallayya Cashew Co., Perumpuzha, Kundara.
34. Mr. P.G. Walter, Cashew" Exporter, Quilon.
35. Messrs. South India Cashewnut Manufacturers" Association, Quilon.

ORDER

Whereas an industrial dispute has arisen between

1. Janab A. Thangalkunju Musaliar, Messrs. A, Thangalkunju Musaliar and Sons, Ltd., Cashew-Exporters, H.O. Kilikollur, Quilon.
2. Janab A. Abdul Kadir, Musaliar, Messrs. A. Abdul Kadir Musaliar and Sons, Cashew Exporters, Kilikollur, Quilon.
3. Janab K. Ebrahimkutti, Messrs. Hidayathul Cashew Company, Cashew Exporters, H.O; Kilikollur, Quilon.
4. Janab K. Mytheen Kunju, Messrs. K. Mytheen. Kunju and Sons Ltd., Cashew Exporters, Asra-mam, Quilon.
5. Janab M. Shamsuddin, Messrs. Indo American Trading Co., Cashew Exporters, H.O. Pazhayattumkuzhy, Mayyanadu.
6. Janab A. Mohammed Kunju, Messrs. A. Mohammed Kunju Cashew Factory, Cashew-Exporters, Kilikollur, Quilon.
7. Sri K. Kesavan, H.O. Kilikollur, Mangadu.
8. Sri P. Krishna Pillai, Messrs. Dhanalekshmi Vilasom Cashew Factory, Cashew Exporter, H.O. Quilon.
9. Sri M.P. Kesavan, Messrs. M.P. Kesavan and Sons, Cashew Exporters, H.O. Kilikollur, Quilon.
10. Sri M.P. Govindan, Messrs. M.P. Govindan Sons, Cashew Exporters, H.O. Kilikollur, Quilon.
11. Sri K. Gangadharan, Messrs. K. Gangadharan and Sons, Cashew Exporters, H.O. Kilikollur, Kundara.
12. Sri E.C. Govindan Asan, Messrs. E.C. Govindan Asan and Sons, Cashew Exporters, H.O. AyathiL Quilon.
13. Messrs. N.A.N.R. Cashew Factory, Cashew Exporters, H.O. Quiion.
14. Sri K. Nanu Pillai, Cashew Merchant, Kukhathala, Quilon.
15. Sri R. Govinda Pillai, Messrs. R. Govinda Pillai and Sons, Cashew Exporters, Kilikollur, Quilon.
16. Sri V. Nilakanta Pillai, Cashew Merchant, Chandanathope, Mangadu.
17. Sri V. Kumaran, Messrs. Kumaravilasom Cashewnut Factory, Ezhukone, Kottarakara.
18. Sri P.C. John, Messrs. P.C. John and Sons, Cashew Merchants, Puthoor.
19. Messrs. Padma Cashev/ Factory, Kilikollur, Quilon.
20. Messrs. Ganga and Bros., Cashew Exporters, Quilon.

21. Messrs. Peirce Leslie "& Co. Ltd., Kundara.
22. Messrs. Oriental Exporters, Cutcherry Road, Quilon.
23. Messrs. Ideal Cashew Export Company, Patta-thanam, Quilon.
24. Messrs. Renown Cashew Works, Quilon.
25. Messrs. Southern India Cashew Company, H.O. Kundara.
26. Messrs. N. Sundareswaran, Cashew Exporters, Quilon.
27. Messrs. south India Corporation Ltd., Cashew Exporters, Kottiyam.
28. Messrs. Swastic Produce and Co. Ltd., Cashew Exporters, Quilon.
29. Messrs. Mallayya Cashew Co., Perumpivma, Kundara.
30. Mr. P.G. Walter, Cashew Exporter, Quilon.
31. Messrs. South India Cashewnut Manufacturers" Association, Quilon.

and the workmen employed- by the above employers in the cashewnut industry in their various factories in the State represented by the All Kerala Cashewnut Factory Workers" Federation, Quilon, in respect of the matters mentioned in the annexure to this order.

And whereas in the opinion of Government it is necessary to refer the said industrial dispute for adjudication. Now therefore in exercise of the Powers conferred by Section 10(1)(c). Industrial Disputes Act 1947 (Central Act 14 of 1947) ". Government hereby direct that the said industrial dispute be referred for adjudication to the Industrial Tribunal, Alleppey having its place of" sitting at Alleppey.

ANNEXURE

1. Are the piece-rated workmen to be given an increment of 12-1/2 per cent, in their wages or any other increment to compensate the loss in their earnings as a result of the reduction of working hours from nine to eight with retrospective effect from 1-11-1124?
2. Are the workmen entitled to any bonus in excess of what the employers have paid for the year 1125?
3. Are the workmen entitled to any bonus in excess of what the employers have paid for the year 1126?
4. Are the workmen to be given one day's leave with wage for every twenty days" work irrespective of any other consideration?
5. Should the accessories for work be supplied to all the workmen by the employer free of cost?
6. Are there any abuses" in measuring and weighting of cashew kernels inside

the factories? Should the measuring and weighing tins", be standardised? If so, how they are to be standardised?

7. Should workmen's representatives be given the right to be present when weighment is made?

8. Should roasting, shelling, peeling and drying (bormah) workmen be given any dress allowance in view of the nature of their work or be supplied with work dresses?

9. Are the workmen entitled, to any sick leave¹ or festival holidays with pay?

10. Should free medical aid be provided for alls workmen and their families?

11. What facilities, if any, should the employers provide for the housing of the workmen?

12. Are the workmen entitled to any attendance bonus and if so at what rate should they be paid?

13. Are the workmen entitled to any compensation during the period for which the factories remain closed for reasons beyond the control of the management?

(By Order of His Highness the Rajapramukh) Sd/- M.C. Thomas, Secretary to Govt. Government Secretariat, Development Department, (Labour Section) Trivandrum, 24th Oct. 1951. It was published in the Gazette of date and copies were served upon the employers noted therein inclusive of the Petitioner-association who is mentioned as 31st and the last, as also on the All- Kerala Cashewnut Factory Workers' Federation". Quilon, representing the workmen in the various" factories.

3. The facts are as follows: The Cashewnut Industry is widely carried on in the Central Travancore area in and around Quilon. It supplies labour for over 80,000 workers and is a source of "dollar purchase" for India, the sale of the nuts being mainly by export to America. There are" about 30 factories owned by individual proprietors, partnerships and incorporated companies. The labour is organised. There are 3 registered trade unions who are all members of the 3rd Respondent Federation. On 1-11-1950 a written representation was presented by Sri T.K. Divakaran on behalf of the trade unions before the Minister for Labour, Trivandrum, making various specific demands. On 23-5-1951, an unregistered trade union called the "Akhila Thiruvithancore Kasii Andi Thozhilali Council" also submitted certain written demands to the employers. These led to negotiations for settlement at the instance of the Assistant Labour Commissioner as also of the Labour Commissioner. The employers conceded the demand for bonus to the extent of 4 per cent, of the total earnings for the year 1126. They were not for conceding any. bonus for the previous year nor were they agree able to any of the other demands which were a dozen in number. On 23-8-1951, the Federation and the Council called a strike which was complete in most of the factories. This led to a tri-partite conference at the residence of the Chief Minister on August 30,

1951 in which the representatives of the Government, the employers, and the employees took part. The Chief Minister, the Minister "for Labour, the Chief Secretary to Government and the Labour Commissioner acted on behalf of the State.

The following are the minutes recorded at that conference:

1. 4 per cent, of the total earning of the workers will be paid as bonus. The question whether a higher bonus is to be given will be referred to the Industrial Tribunal.
2. The question of wages will be referred to a Minimum Wages Committee.
3. The other issues will be taken up for negotiation. If they are not settled through negotiation, they will be referred to the industrial Tribunal.

and Ex. II is the copy thereof served on the Petitioner. The Petitioner sent the following reply (Ex. III) on 6-9-1951:

We are in receipt of a copy of the minutes of the Tripartite -Conference held by the Hon"ble "Chief Minister ."at Cliff house, on 30-8-1951, regarding the Industrial dispute between the employers and employees in cashewnut industry and regret to note the following discrepancies in the minutes.

1. The 4 per cent, bonus referred to was for the year 1126 only and that the year is not mentioned in the minutes. It is important that the year 1126 should be mentioned in the minutes. Regarding referring the question of higher bonus to Industrial Tribunal, none of the Industrials had agreed to the proposition made by the Government.
2. Regarding item 3 of the minutes, we have to point out that no other issues were taken up at the above said conference. We would request the Government to amend the minutes accordingly.
4. Pursuant to the third item in the minutes, the Labour Commissioner who, among Ors. , had been appointed a Conciliation Officer by the following notification:

No. L2-7955/50/DD (1). 12-8-1950.

Under Section 4, Industrial Disputes Act, 1947, (14 of 1947) the Government of Travancore-Cochin are pleased to appoint the Labour Commissioner and the three Assistant Labour Commissioners as Conciliation Officers within their respective territorial jurisdictions.

(By Order of His Highness the Rajpramukh) Sd/- V.K. Velayudhan, Secretary to Govt. proposed to hold conciliation proceedings u/s 12(1), Industrial Disputes Act and on 29-9-1951, communicated that fact to all the concerned parties. The following (Ex. 4) is the communication received by the Petitioner:

I would invite your attention to the minutes of the Tripartite Conference held by

the Hon"ble Chief Minister in Cliff house on 30-8-1951 where certain decisions were taken regarding bonus and the question of minimum wages. As decided in the conference, I wish to hold conciliation proceedings or contemplated u/s 12(1), Industrial Disputes Act, regarding other demands contained in the Memorandum submitted to the cashewnut employers by the All Kerala Cashewnut Factory Workers" Federation. Quilon on 1-11-50 and subsequently. Therefore, I request you to meet me at 2 p.m. on 5-10-1951 in the Quilon Rest House.

The Industrial Disputes Act (Central) 14 of 1947 was extended, to the whole of India except the State of Jammu and Kashmir as from 20-5-1950, that is the on which the President assented to the Industrial Disputes (Appellate Tribunal) Act, 48 of 1950, the 34th section of which provided for the amendment of the Industrial Disputes Act, 14 of 1947 in the manner specified in the schedule and the first amendment so specified was of the second Sub-section of Section 1 so as to read "It shall extend to the whole of India except the State of Jammu and Kashmir."

5. On 5-10-1951, the Labour Commissioner held joint discussions with the employers and workmen touching the dispute and ascertained and fixed the points at issue between them. Not being able to bring about a settlement of the dispute, he as required by Clause (iv) of Section 12, Industrial Disputes Act, submitted a report to the Government dated 7-10-1951 (page 161 of the file produced by the State) enumerating the issues framed as aforesaid and recommending a reference of the dispute to the Industrial Tribunal as the only course open. It was this report that led to the impugned order of reference to the Tribunal and the matters mentioned in the annexure to the order are the issues submitted by the Conciliation Officer for reference to the Tribunal. On receipt of the reference the Industrial Tribunal numbered it as Industrial Dispute No. 15/1951, fixed November, 12 as the date for starting the proceedings and summoned the concerned parties therefor. Exhibit 5 is the summons issued to the Petitioner. Respondent 3, the Petitioner and Messrs. Pierce Leslie and Co. Ltd., Kundara, (the 21st employer noted in the order of reference) submitted written statements before the Tribunal on January 17, March 1 and March 14, 1952 respectively.

On 7-3-1952, the Petitioner sent the following letter to the Chief Secretary to Government (Ex. 6):

An Industrial dispute between the employers in cashewnut industry and the workers is now pending adjudication before the Industrial Tribunal, Alleppey, as Industrial Dispute 15/51. This was taken up for adjudication as per the order of reference L2-8772/50 dated 24-10-51 and the said order is based on the letter of the Labour Commissioner LR3-2711/51 dated 11-10-51 sent to the Government. A copy of the said letter is necessary for us to ascertain the exact scope of the reference so that the employers may be enabled to represent their case properly in the said enquiry. We request you to direct the Labour section to

the Secretariat to furnish us with a copy of the said letter of the Labour Commissioner. We shall on hearing from your office furnish necessary fees for the granting of the copy to us.

The reply to which (Ex. 7) is as under:

The applicant is informed as follows: The matter was referred to adjudication by virtue of Order L2-8772/50/DD dated 25-10-51. That order is complete in itself. There is no occasion to grant a copy of the Labour Commissioner's letter dated 11-10-51.

This original petition was presented on 1-4-1952. Along with it the Petitioner presented C.M.P. 834/52 praying for stay of proceedings before the Industrial Tribunal in the aforesaid industrial dispute No. 15/51, as also in industrial disputes Nos. 1, 2, 3, 4, 7, 8, 10 and 11 of 1952 which arose out of events that happened during the pendency of the first. An interim stay of proceedings was ordered. The grounds on which the application is based are (1) that the Labour Commissioner who issued the letter of 29-9-1951 (Ex. 4) proposing to hold conciliation proceedings had, to the Petitioner's knowledge, not been appointed Conciliation Officer by the requisite notification in the Gazette and that therefore the letter submitted by him as also the order of reference to the Tribunal purporting to be based thereon are ultra vires, (2) that the State acted against natural justice in refusing a copy of the letter read in the order of reference, (3) that neither the Trade nor the All-Kerala Cashewnut Factory-Workers' Federation are legally recognised bodies competent to represent the workers, (4) that the Petitioner is a non-profit sharing association registered u/s 28, Travancore Companies Act (Section 26 of the Indian Act) and cannot, therefore, be an employer, that the proprietor of employer No. 13 died before the order and his successor had not been brought in, that the employer No. 3 is a partnership with which Ebrahimkutty noted as the representative had nothing to do, and (5) that the reference is made without even ascertaining the parties between whom the matters of dispute shown in the annexure to the order existed or were apprehended, that is to say, the order did not indicate that a dispute existed or was apprehended in every one of the factories. Even in respect of factories where dispute might have existed, it was not indicated which of the various items shown in the annexure existed in particular factories. The reference was characterised as omnibus and vague and therefore illegal.

6. The entire file relating to the impugned order was produced before Court in return to the notice on this application. Two counter-affidavits have been filed, one by the Assistant Labour Commissioner, Trivandrum and the other by Respondent 3, wherein all the aforesaid and other facts are stated and: the complaints raised and the averments made in the Petitioner's affidavit are answered and repudiated.

7. At the trial the various points of fact and law on which the parties are at issue were mentioned and learned Counsel for the Petitioner prayed for time to file

affidavits in reply. The counter-affidavits were filed several months ago and no reason was alleged for default in filing affidavits, in reply. The prayer for time was nevertheless granted in the interests of justice and in view of the importance of the matter. The opportunity thus afforded was, however, not availed of and no affidavit in reply was filed.

8. At the commencement of the argument, learned Counsel for the Petitioner candidly confessed that it was in ignorance of the notification in the Gazette appointing the Labour Commissioner as Conciliation Officer that the first ground of objection to the proceedings held by him and to the order¹ of reference was taken. He said that the Government Pleader showed him the said Gazette Notification (Gazette dated 22-8-1950, Part I, page 1084) and he was satisfied that the Labour Commissioner had been appointed Conciliation Officer and therefore the ground is not pressed. He, however, urged that the other grounds would still be available to him and addressed arguments thereon.

9. Learned Government Pleader Shri Parameshwaran Pillai addressed arguments in reply and sought to sustain the impugned order only as one made u/s 10(1) (c). Shri Balagangadharan Nair appearing for Respondent 3 said that he had no separate arguments to urge and that he adopted all the arguments of the Government Pleader. Two points were raised preliminarily by the learned Government Pleader, any one of which, it was urged, would entail dismissal of the petition "in limine". The first point was that the Petitioner omitted to intimate the Court the facts and events that led up to the tripartite conference which would indisputably indicate the existence of a dispute. This suppression of material facts, it was urged, was deliberate and mala fide and the rule nisi obtained as a result of such non-disclosure is liable to be dissolved and the petition dismissed. The second point was that the order sought to be quashed is an administrative order and certiorari does not lie to quash it. The leading decision of the Court of Appeal in - "Rex v. Kensington Income tax Commissioners" (1917) 1 KB 488 (A) was relied upon in support of the first point. The following extract from the judgment of Lord Cozens-Hardy M. R. lays down the rule:

It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.

Then there is an observation in the course of the argument by Lord Langdale: "It is quite clear that every fact must be stated or even if there is evidence enough to sustain the injunction, it will be dissolved." That is to say he would not decide upon the merits, but said that if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even that there might be facts upon which the injunction might be granted, but that he must come again on a fresh application. Then there is a passage in Lord Langdale's judgment which is referred to in the head-note. It is this:

there is, therefore, a question of law, whether having regard to the facts thus appearing, the Plaintiffs are entitled to the protection they ask; and there is also a question of practice, whether the facts stated in the answer being material to the determination of the question, and being, within the knowledge of the Plaintiffs by whom the case was brought forward, and who obtained; an ex parte injunction upon their own statement, whether the omission of the statement at 5 these facts in the bill does not constitute a reason why the ex parte injunction so obtained; should be dissolved". They held that the injunction ought not to be granted although there might be materials apart from this question v. upon which the injunction might been granted. Rolfe B. says this:

I have nothing to add to what Lord Langdale has said upon the general merits of the case but upon one point it seems to me proper to add" this much, namely, that the application for a special injunction is very much governed by the same principles which govern insurance matters which are said to require the utmost degree of good faith, "Uberrima fides. (Pages 501 and 505).

If you make a statement which is false or conceal something which is relevant from the Court, the Court will discharge the order and say "you can come again if you like, but we will, discharge this order, and we will apply the general rule of the Court to applications like this." There are many cases in which the same principle would apply. Then it is said "That is so unfair you are depriving us of our right to a prohibition on the ground of concealment misstatement in the affidavit". The answer is that the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and with the Court.

It follows from what I have said ... that application must be refused, not on the merits of the case, but on the grounds that the rule nisi was obtained by concealment facts which ought not to have been concealed by statements which were not in accordance the fact." (page 506).

This is a salutary rule and the power to a petition without enquiring into the merits is Inherent in the Court as it is necessary for its own protection. Great care and caution is necessary in applying the rule as the result of its application would be to deny a litigant the advantage of an enquiry into the merits of his cause then, if not for ever. Viscount Reading C.J. stated the rule and the limits of its application thus in the above case:

Where an ex parte application has been made in this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as

they have been stated in the applicant's affidavit, and everything will heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything" further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit. (pages 495 and 496).

Courts in India have recognised and given effect to this rule. Reference may be made to - "Indumati Devi v. Bengal Court of Wards" AIR 938 Cal 385 (C); -- Manibhai Hathibhai Patel Vs. C.W.E. Arbuthnot, ; - Asiatic Engineering Co. Vs. Achhru Ram and Others, - Ratan Chandra Nayak Vs. Adhar Biswas, and - Thulasi Das v. Allepney Chamber of Commerce" AIR 1953 TC 26 (G).

10. Do the facts in this case attract the application of the rule? The non-mention of the facts alleged to constitute suppression is not relied upon in the written objections presented on behalf of the Respondents in the shape of the counter-affidavits as a circumstance entailing dismissal of the application. The Petitioner may not, therefore, have considered it necessary to explain the said omission by an affidavit in reply. It is not a case where no explanation is possible. Indeed . an explanation is apparent even on the facts stated 1 in the Petitioner's affidavit. The tripartite conference which was occasioned by the events that) preceded it has been referred to by the Petitioners " in their affidavit. Except as leading up to that conference, the event that immediately preceded it, namely the strike, has no significance. It was during the continuance of the strike that the conference was conducted and | it was on account of certain agreements reached I at the conference that the strike was called off. The reference to the conference and the minutes I recorded thereat therefore necessarily though impliedly involve a reference to the strike. The other event that transpired before the conference is the making of certain demands by the workmen in petitions presented to the Government. It is not stated in either of the counter-affidavits that the employers were aware of the said demands as and when they were made At the tripartite conference the demands of the workmen were intimated to "the employers and the minutes recorded refer to "jtfce modus operandi for resolving the various items of controversy in the manner indicated therein. It cannot, therefore, be said that the Petitioners are guilty in any manner in not having expressly made mention of the event or events that preceded the tripartite conference. The rule nisi in this case was thus properly obtained and the appli- cation to cancel the rule or make it absolute hasl to be considered on its merits.

The epithet "preliminary" tis inappropriate as regards this objection because a preliminary objection is one that is raised to the sustainability of an application or action on the basis of the assumption of the truth of all the averments of fact made by the suitor in the application or plaint and is, therefore, one that can be taken in argument though not raised in the written defence. The objection here is obviously and entirely different and is not one which can be taken in argument without raising it in the written defence so as to give an opportunity to the

opponent to state his answer or explanation. The second objection raised is that the order impugned is an administrative order not reviewable by the Court. An administrative order if not vitiated by mala fides is immune from being impugned in a Court of law. u/s 10, Industrial Disputes Act the existence or apprehension of an industrial dispute is essential to sustain a reference to a tribunal. The reference of an individual dispute which is not and has not developed into an industrial dispute by its adoption by the workers or a large number of them, cannot be made the subject of a reference. The Calcutta and Madras High Courts as also this Court have held so. (See *Manager, United Commercial Bank Ltd. Vs. Commr. of Labour and Another*, - "J. Choudhury v. M.C. Banerjee" 55 Cal WN 256 (I) and - "Standard Vacuum Oil Co. v. Industrial Tribunal, Ernakulam" AIR 1952 TC 249 (J)). If the dispute is an industrial dispute the question arises as to whether its actual existence is a condition precedent to the making of an order of reference. The language of the section as it originally was, might lend colour to the contention that it is.

The amendment of 1952 leaves it to the appropriate Government to decide whether there is or there is not the existence or apprehension of an industrial dispute and if it is of opinion that there is then a reference to a tribunal for adjudication of the dispute can be made. In such a case the act of the Government in coming to the conclusion as to the existence or apprehension of an industrial dispute is administrative and its correctness cannot be canvassed in a Court of law.) When the discretion to decide the existence of a fact is by statute conferred upon an authority preliminary to the authority taking a particular kind of action, the decision reached by that authority on the preliminary question is administrative. In the - *Province of Bombay Vs. Kusaldas S. Advani and Others*, his Lordship Das J. said:

It is well established that if the Legislature simply confides the power of doing an act to a particular body if in the opinion of that body it is necessary or expedient to do it, then the act is purely an administrative, i.e., an executive act as opposed to a judicial or quasi-judicial act, and, in the absence of proof of bad faith, the Court has no jurisdiction to interfere with it and certainly not by the High prerogative writ of certiorari.

This decision related to a case that arose before the Constitution of India. That circumstance, however, makes no difference in the principles to be applied. Quite recently in the - *State of Madras Vs. C.P. Sarathy and Another*, the Supreme Court affirmed this view and declined to interfere in certiorari under Article 226 of the Constitution of India where the question of the legality of a reference to an Industrial Tribunal u/s 10(1), Industrial Disputes Act arose, on the ground that the reference was too vague and general and did not specify the particular disputes that existed or were apprehended between particular cinema companies and their employees. Their Lordships observed that

in making a reference, the Government was doing an administrative act and the fact that it had to form an opinion as to the factual existence of an industrial

dispute as a preliminary step to the discharge of its functions did not make it any the less administrative in character.

A reference u/s 12(5) of the Act would be an administrative act of a fortiori". There is in this case a dispute; it is unquestionably industrial, and in the opinion of the Government there was a case for reference to a tribunal. This preliminary objection has therefore to be upheld though Section 12(5) was not relied upon by the learned Government Pleader.

11. Mr. Abraham, learned Counsel for the Petitioner in argument gave up the first of the five points namely the incompetency of the Labour Commissioner to act as Conciliation Officer on which the petition was grounded but instead developed a point based on the form of the impugned order. He urged that in order to constitute a valid reference u/s 10 of the Act there must be a concurrence of two factors namely that an industrial dispute must exist or should be apprehended, as also the appropriate Government must be of opinion that such a dispute exists or is apprehended. This argument was based upon the language of Sub-section (1) of Section 10 of the Act as amended by the Industrial Disputes (Amendment) Act, 18 of 1952 (passed on 4-3-1952) which altered the original language "If any Industrial dispute exists or is apprehended, the appropriate Government may" into "where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time". The point sought to be made is that here, as regards the dispute, the order says simply "whereas an industrial dispute has arisen" and the opinion of the Government comes in for mention only as regards the necessity to refer the said industrial dispute for adjudication in para. 2 which reads: "whereas in the opinion of the Government it is necessary to refer the said industrial dispute for adjudication". It is contended that the Government did not bestow their mind as to the existence of the dispute and form an opinion that it does which is necessary to justify a reference. The contention is not only highly technical but is also devoid of merit being anachronistic and cannot in any event be accepted in view of the peculiar facts and circumstances obtaining in this case, even if the Petitioner be not estopped from raising it.

The minutes recorded at the tripartite conference (Ex. II) attended by all the employers as also the Petitioner as their representative would show that all the three parties namely Government, the employers and the employees concurred in their opinion that an industrial dispute existed which had to be settled. As peace in and prosperity of industry is the thing to be and that was desired by all the parties alike, settlement by negotiations was thought of first. Such a settlement is preferable to a decision by a Court or Tribunal and every progressive State endeavours or should endeavour to settle industrial disputes by negotiation avoiding decisions by Boards or Tribunals. In the event of negotiations failing, all the three parties to the conference agreed that the dispute may be referred to the Industrial Tribunal. Settlement by negotiation which was tried by the Labour Commissioner as conciliation Officer failed and1

on "its failure, reference to the tribunal should follow. It did. The complaint of the Petitioner is that para. 1 of the order refer" to the existence of the dispute does not contain the words "in the opinion of the Government" though these words occur in para. 2. The existence of these words in para. 2 is relied upon further to show that the Government adverted-to" that expression and deliberately omitted it from para. 1 and the omission is calculated even-to suggest the contrary of what para. 1 purport? to say. The argument is indeed ingenious but-is altogether unsound and unacceptable. The language has to be taken and interpreted in the context including the tripartite conference, the opinions formed and conclusions reached thereat. So construed and understood, the Government were and have always been of title opinion that an industrial dispute to be settled existed.

The Petitioner was also a party to the conference at which the said decisions were taken and in the absence of any suggestion that anything; that happened., between that conference and the reference tended or operated to make the dispute, non-existent, the dispute continued and would continue and no one can be of opinion that it"-did not exist. Another reason why the contention -cannot be accepted is that the reference in this case is really one u/s 12, Clause (5) of the Act" The scheme of Section 10 is different from that of Section 12. u/s 10 the Government are entitled in their discretion to refer an industrial dispute to a Tribunal for adjudication though they are not compellable to do so. u/s 12 when an industrial dispute is taken up by a conciliation officer under Clause (1) and a report is made by him under" Clause (4) on account of his not being able to arrive at a settlement, the Government have an obligation under Clause (5) to refer the dispute to a Board of Tribunal if satisfied that there is a case for reference or where no such reference is made, to record and communicate to the parties concerned the reasons therefor. This is a statutory obligation and the Government can be compelled by an order of mandamus issued by the Court to perform that legal duty i.e., in effect to act in1 one or the other of the two ways permissible though they are not compellable to make a reference, that is, to act in a specified way, as in them is vested the right to choose. (See -- "State of I Madras v. Swadesamitram Printers" Labour" Union" AIR 1952 Mad 297 (M). The letter from the Labour Commissioner dated 11-10-51 read in the order of reference is in fact a report by the Conciliation Officer u/s 12, Clause (4) of the Act (as can be seen from page 161 of the file) and the wording of the order is, in this regard," inartistic as it is inaccurate where the reference is stated to be made in exercise of the powers conferred by Section 10(1)(c). These defects, however, are not vital and will not invalidate the reference to make which the Government had ample jurisdiction. The contrast in the language employed in paras. 1 and 2 of the order would show that the reference is really one u/s 12 Clause (5) because under that clause, on receipt of a report of the Conciliation Officer, the Government should be satisfied that there is a case for reference before making one and no reference should be made on the mere ground that conciliation T failed to effect a settlement. The order, therefore is correct in form

and substance and it might perhaps have been a defect had para. 2 not mentioned that in the opinion of the Government there was a case for reference.

12. The second of the points relates to refusal of the State to grant the Petitioner copy of the letter of the Labour Commission read in the order of reference. The application for copy was made after submission of a written statement before the Tribunal. It cannot be said as contended on behalf of the State that the Petitioner is not entitled to a copy of that letter. Had it been a confidential correspondence between the Labour Commissioner and the State the Petitioner may not be entitled to its copy. It is on this basis perhaps that the plea is taken in the counter-affidavit presented on behalf of the State that the Petitioner is not entitled to get a copy of the letter. It transpires, however, that the so-called letter is really a report under Clause (4) of Section 12 of the Act and as such a public document concerning both the parties to the dispute, the employer and the employee and when on the strength of such a report the Government refers the dispute to the adjudication of a Tribunal, it is not possible to deny the parties access to or the benefit of the contents of that report. Had the Government adverted to the facts accurately and bestowed attention upon the material features of the situation, and called the paper dated 11-10-1951 read in the order as the "report submitted u/s 12(4) of the I. D. Act, 1947" by the "Conciliation Officer, as it purports to be, and not a "letter from the Labour Commissioner" and had they mentioned that the reference was under Clause (5) of Section 12 as they should also have done and which would be in accordance with the contents of the order, they are not likely to have denied a copy of that paper to the Petitioner and had that not been denied, this petition might not have been filed. It is clear from the facts narrated that the proximate cause of this application is the refusal to give a copy of the "letter". Though the refusal to give a copy cannot be justified, neither can it be considered to be a denial of natural justice to the Petitioner as is contended by learned Counsel on their behalf. The refusal to give the copy does not in any manner affect the validity of the order of reference to the Tribunal.

13. The question of the right of the various trade unions and of the Federation Respondent 3 to represent the workmen before the Tribunal is the third point urged by Mr. Abraham. As already stated, all the trade unions are registered. The fact of registration is not disputed. The contention urged is only that the trade unions have not been recognised under Chapter III-A in the Indian Trade Unions Act, 1926 inserted by Section 4, Indian Trade Unions Amendment Act, 45 of 1947. Chapter III-A contains Sections 28A to 28I, relating to recognition of trade unions. Section 28F provides for the "rights of recognised Trade Unions", and it reads thus:

(1) The executive of a recognised Trade Union shall be entitled to negotiate with employers in respect of matters connected with the employment or non-employment or the terms of employment or the conditions of labour of all or any of its members, and the employer shall receive and send replies to letters sent

by the executive on, and grant interviews to that body regarding, such matters.

The right to represent workmen in a proceeding under the Industrial Disputes Act is not one of the rights conferred upon recognised Trade Unions or arising out of such recognition. Section 36 Clause (1), Industrial Disputes Act relating to the representation of workmen and employers in proceedings under the Act reads as follows:

36(1) A workman who is a party to an industrial dispute shall be entitled to be represented in any proceedings under this Act by an officer of a registered trade union, and any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers.

It is clear from the aforesaid provisions of the two Acts that recognition is necessary only to entitle a trade union to the powers and privileges u/s 28F, Trade Unions Act whereas registration would be enough to entitle a workman to be represented by a trade union of which he is a member. The workmen were in fact being represented by Respondent 3 Federation in the conciliation proceedings as also in the tripartite conference which preceded the order of reference. The existence and representative character of the trade unions as also of the Federation for purposes of proceedings under the Act would appear to have been admitted by the Petitioner. Nevertheless the Petitioner appears to have taken objection to their representative character in the statement filed before the Tribunal. It is up to the Tribunal to consider that question and pass appropriate orders. The alleged non-recognition of the Trade Unions and the Federation under the Trade Unions Act is not a circumstance that vitiates or in any manner affects the validity of the order of reference.

14. The next point urged by Mr. Abraham is that the Petitioner association is not an employer being a non-profit-sharing company owning no factory. In the order of reference the parties noted as employers are not merely the Petitioner but all the actual employers as well who are 30 in number. The Petitioner-association is admittedly a representative of the employer factories. They function as such in this petition; otherwise they have no locus stand to present it. Clause (1) of Section 36, Industrial Disputes Act read above provides for representation of employers by enacting that (1) "any employer" who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers.

The Petitioner is therefore in law entitled to represent all the employers and it is not necessary for such representation that the employers should also be "eo nomini" parties to the reference. The defect pointed out on behalf of the Petitioner in relation to some of the employers shown in the order is thus no defect at all which will affect the propriety of the reference or the validity or effectiveness of the proceedings before the Tribunal.

15. The last point urged by Mr. Abraham is that the dispute stated to exist is

omnibus and vague. Reliance was placed upon - "Ramayya Pantulu v. Kutty and Rao (Engineers) Ltd." AIR 1949 Mad 616 (N), in support of this position. The order of reference in that case was as follows:

Whereas industrial disputes have arisen between the workers and management of certain Engineering firms and Type foundries in the Province of Madras and whereas industrial disputes are apprehended in the rest of the Engineering firms and type foundries in respect of certain matters in the exercise of the powers conferred by Section 7(1) and (2) read with Section 10(1)(c), Industrial Disputes Act, 1947 "His Excellency, the Governor of Madras hereby constituted an industrial Tribunal consisting of one person, namely, Sri T.D. Ramayya Pantulu and directs that the said industrial disputes be referred to that Tribunal for adjudication.

and the learned Judges say about it that

It is seen that in this notification there is no reference to any specific disputes between any group of workers and managements nor is there any specification of the firms in which disputes between the management and workers existed.

and the learned Judges conclude the judgment by stating (at p. 317)

although it is not necessary for us to give a definite finding on this point; yet it seems clear to us that in a reference by the Government u/s 10(1),- it is most desirable that the Government should state what points they consider are in dispute and should be adjudicated "by the Tribunal.

That decision obviously has no application to the facts of the present case.

The Kandan Textile Ltd. Vs. The Industrial Tribunal (1) and Others, , is also relied upon by Mr. Abraham. That was a case in which the award of an industrial tribunal was quashed in certiorari. The reference to the tribunal was made by the Government u/s 10(1)(c) on the basis of a letter sent to the Secretary to Government by one Sundaram, who was a dismissed servant of the employer mills and whose attempts to get reinstatement failed, as president of a certain Dandan Weaving Workers" Union, giving a list of disputes existing between the management and the workers of the Mills and praying for a reference to a tribunal. One of the questions that arose for consideration was whether the said Union represented the workers. The very existence of the Union and its right to represent the workers were questioned before the tribunal and the only evidence adduced was the certificate of registration. No evidence was tendered that the Union even functioned and as to who the members were. The evidence showed the existence and active functioning of Anr. Union called the Kandan Textiles Labour Union of which the majority of the workmen were members and who had no manner of; dispute with the management. Under these circumstances Mack,J., said that the materials on record showed that the Kandan Weaving Worker"s Union had no legitimate original and in face-no real existence at all. Under the circumstances the learned Judge observed that

Registration of an Union under the Indian Trade Unions Act is not conclusive proof of its real existence. It may raise a presumption to this effect.

This decision has no application to the facts of the case.

In this case the employers and the workmen between whom the dispute exists have been mentioned in the order. The specific points of dispute to be considered by the Tribunal are also mentioned. These points were fixed by the Conciliation Officer as a result of joint discussions held in the course of conciliation proceedings. The points are such as are inherent in the relationship of any employer and employee in the cashewnut industry to which the dispute relates. The circumstance that particular disputes are not allotted to particular employers and their employees is immaterial because a reference could be made not merely of an existing dispute but also of one that is apprehended. If a dispute in respect of a certain industry exists between the employers and the employees in some of the factories engaged in the industry of a nature inherent in the employment of labour in the particular industry, a dispute can certainly be apprehended in respect of other employers and employees. Here, however, the case would appear to be that all the points of dispute noted in the order did exist in the case of every employer. Even if they did not, the non-indication of the specific points of dispute in the order of reference is not a circumstance which would invalidate it. (See - AIR 1949 148 (Federal Court))

When there are various employers engaged in the same industry and the identical questions of dispute arise between the several employers and the employees under them, a composite single reference of the dispute as between all the employers and all the workmen is competent and legal. In - *Raju's Cafe and Others Vs. The Industrial Tribunal and Another*, Rajamannar, C.J. says as follows:

If the Government had before them material to conclude that in respect of each of the 85 hotels there were disputes as regards each of the 11 items mentioned in Annexure II to the reference between the management and the workers, we do not think that a single reference "would be incompetent. It will be a case of joinder of several references into one comprehensive reference to the same Tribunal. Even if separate references had been made in respect of each firm to the same Tribunal, obviously all the references would have been heard and disposed of together as certain common points would arise for determination. (p. 867).

I am in complete agreement with this view, if I may say so with respect. The same view was taken by the Calcutta High Court in - *"Birla BrOrs. Ltd. v. Modak"* ILR (1948) Cal 209 (R). Clough J. says as follows at page 230.

But there is no bar to the making of one reference, when the dispute is, as in this case, between the employers of an associated group of companies and their employees, who are all members of one Union and who are acting in, concert and who have together raised one dispute or series of disputes with their

employers.

16. The result is that the petition fails, the rule nisi is cancelled and the petition is dismissed.

17. There remains only one other question viz, what should be the order as regards costs. The general rule is that costs follow the event of: the verdict. That, however, is not an absolute rule, t The conduct of the parties prior to the litigation) in connection with the events leading up to it as i well as their conduct in the litigation besides the ultimate event have to be regarded in exercising the Court's discretion. In this regard being had to the defects in the impugned order, though, in the special circumstances they did not prove fatal, and the refusal to grant the Petitioner a copy of the paper read in the said order when no privilege could be claimed about it (see the decision of a Pull Bench of this Court in "Joseph John's case" AIR 1953 TC 130 (S)), which held that no privilege could be claimed even in respect of the correspondence leading up to or following a paper read in an order issued by the state concerning the Petitioner) and the persistence in that refusal in the counter-affidavit filed in these proceedings, having regard also to the various points raised in the case and the point on which the Respondents succeed, I direct that the parties do pay themselves their respective costs.