

(2006) 03 DEL CK 0254

In the Delhi High Court

Case No : Writ Petition (C) 10251-10255 of 2005

Pradeep Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 309

Railway Establishment Code — Rule 1A, 28, 56

Trade Unions Act, 1926 — Section 16, 28

Citation : (2006) 92 DRJ 243

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Rajeev Nayyar and Maninder Singh, Arvind Nigam, Kirtiman Singh, Sushant Kumar and Sagar Pathak, in W.P.C 10251-10255, 10306-10350, 10352-10401, 18177-18180 and 22939/2005, Sandeep Sethi, Sidharth Luthra and Bhupendra Pratap Singh, in W.P.C 18090-18104/2005, Valmiki Mehta and Samir Ali Khan, in W.P.C 21222-21236/200, for the Appellant; Geetanjali Mohan and Lipika Sharma for Railways, A.M. Singhvi, Vijay Hansaria and C.D. Singh and Vivek Narayan S. for URMU in W.P.(C) 10251-10255, 10306-10350, 10352-10401, 18090-18104, 21222-21236 and 22939/2005 and Neeraj Atri, for Railways, A.M. Singhvi, Vijay Hansaria, C.D. Singh and Vivek Narayan S. for URMU in W.P.(C) 18177-18180/2005, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In the S.C. Prabhakar and Pradeep Kumar cases the Petitioners have prayed for the issuance of a writ of prohibition or any other writ, order or direction in that nature restraining the Respondents, and particularly Respondent No.3, Uttariya Railway Mazdoor Union (URMU), from acting on the List of Central Council Members circulated vide Communication dated 24.5.2005; that directions be issued for the enforcement of the Rules for regulation of Association of Non Gazetted Railway Servants framed by Respondent No.1; it has also been prayed that Communication dated 24.5.2005 of the Respondent No.1 be quashed. In the Praveen Kumar case a prayer has been made for the issuance

of a writ of prohibition or any other similar and appropriate writ or order calling for the records pertaining to the meeting of the Central Council/Working Committee held on 03/04.06.2005 and for restraining the Respondents from taking any further steps pursuant to the decisions on 03/04.06.2005 as that Meeting was without jurisdiction. In the Arvind Kumar case a prayer for calling of the records pertaining to their removal from the Electoral List, and after judicial scrutiny to direct the inclusion of their names in the Electoral List has been made; it has also been prayed that the election process of URMU be not initiated until their names are included in the Electoral List. In the Vinod Kumar Bhatt case it has been prayed that the Respondent Union be restrained from functioning till such time the freshly elected Office Bearers assume charge. In the Gulshan Kumar case a prayer has been made for restraining the Respondent from deleting/ amending/ terminating/ changing the List of the office-bearers at various levels of URMU and the maintenance of status quo till the elections are completed. In the Brij Lal case the Court has been petitioned for restraining the Authority/ Respondent from preparing the Electoral List as per Lists submitted by URMU and other factions of the Union as the List of both factions are illegal and contrary to the provisions of the Constitution. It has also been prayed that directions be issued for the enforcement of the Rules and Regulations of Union in the making of the Electoral List and Election of the Branches before finalising the Electoral List.

IS WRIT JURISDICTION AVAILABLE

FOR ADJUDICATING UPON STRICTLY

TRADE-UNION INTERNAL DISPUTES

2. Mr. Hansaria, learned Senior Counsel for the Respondent has submitted that whether jural credence is to be given to the Voters' List dated 25.2.2005 or 24.5.2005 is purely a private law dispute between two factions of the Union and no element of public law is involved. No action or decision of an 'Authority' is called upon to be considered by way of judicial review.

3. In Federal Bank Ltd. Vs. Sagar Thomas and Others, , it has been posited that "a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute, to compel it to perform such statutory function".

4. The maintainability of a writ petition in matters which partake of the nature of Trade Union disputes has already engaged the attention of the Courts on several occasions. In North Eastern Railway Employees Union and Others Vs. IIIrd Additional District Judge, Farukhabad and Others, , the order of the High Court

designating the General Manager, North Eastern Railways as the Authority to hold the elections to the North Eastern Railway Employees Union was modified by the Apex Court by directing that the elections be held under the supervision of the Registrar of Trade Unions or by any officer designated by him, as it was this Authority who is statutorily charged with the duty of implementing the provisions of the Trade Unions Act. In *Ratan Kumar Dey v. Union of India* 1991 (63) FLR 463, a Division Bench of the Gauhati High Court has opined that disputes between rival groups of a Trade Union, being in the nature of a private quarrel, exercise of the extraordinary powers under Article 226 would not be appropriate and that the proper remedy would lie by way of a civil suit in which evidence could be freely and conveniently recorded. Similar pronouncements have been made by a Single Judge of the High Court of Andhra Pradesh in *Sanjeeva Reddi (G.) Vs. Registrar of Trade Unions and Others*, . In the same year M.H. Beg, J., as the Learned Chief Justice of India then was, observed that in the event of any dissatisfaction with the decision of the Registrar of Trade Unions taken pursuant to Section 8 read with Section 28 of the Trade Unions Act, the proper remedy to adopt would be the filing of a civil suit. Learned counsel for the Respondents have also cited *Maharaj Singh and Others Vs. Northern Railwaymen's Union and Another*, but it is of little relevance. A Division Bench presided over by B.P. Singh, J, as his Lordship then was, has opined in *Singh R.N. v. State of Bihar* 1998 II LLJ 136, that it is not within the jurisdiction of the Registrar of Trade Unions to determine which of the rival groups of office bearers truly represents the Union and that this determination must be carried out in a civil suit. This is also the approach taken in *Falguni Chakraborti v. The State of West Bengal* 2002 LI.C. 65. Mr. Hansaria, learned Senior Counsel for the respondent has submitted that whether jural credence is to be given to the Voters List dated 25.2.2005 or 24.5.2005 is purely a private law dispute between two factions of the Union and no element of public law is involved. Reliance has been placed on *Union of India (UOI) and Another Vs. S.B. Vohra and Others*, , in which the Apex Court had reiterated the view that unless some public law element is involved the Writ Court would not exercise the extraordinary jurisdiction vested in it under Article 226 of the Constitution, and further that "the modern trend also points to judicial restraint in administrative action".

5. On behalf of the Northern Railways Mrs. Geetanjali Mohan has also laid siege to the legal propriety of a writ petition which seeks to regulate elections of the URMU. She has emphasised that it is entirely a private and/or civil dispute between the rival factions of URMU which could be resolved only after the reception of evidence to clarify disputed questions of fact. For this reason she has submitted that the writ petitions are not maintainable. She has placed reliance on *State of Rajasthan Vs. Bhawani Singh and others*, *State of Goa and others Vs. Leukoplast (India) Ltd. etc.*, and *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, .

6. Per contra, Mr. Maninder Singh, learned Counsel for the Petitioner has vehemently contended that the writ petitions are maintainable as the conduct of

elections partakes of the nature of a statutory function. He has argued that the Railways are the largest employers as well as the largest public utility in India. Rules pertaining to the subject Elections are framed under Article 309 of the Constitution. The Railways Administration discharges important and pivotal public functions when it decides to grant casual leave to its employees to enable them to attend to Trade Union activities including elections. Support has been drawn from the Division Bench decision titled Union of India (UOI) Vs. Santi Kumar Banerjee and Others, . In this case, it had been held that if a breach occurs in respect of the Indian Railway Establishment Manual, since these are Statutory Rules framed under Article 309 of the Constitution, persons affected by this breach can seek redressal by way of a writ petition. The following passage from Union of India (UOI) and Another Vs. M. Bhaskar and Others, , has been relied upon but, in my opinion, cannot be extrapolated onto these petitions:

9. This leaves for consideration the question of validity of the memorandum. The Ernakulam Bench, which held the memorandum invalid, did so for the reason that the Railway Board, which had issued the memorandum, could not have changed the provisions finding place in the Establishment Manual, which are statutory in nature, whereas the memorandum was categorised as administrative instruction. Now, there is no dispute in law that statutory provision cannot be changed by administrative instruction. But then, the Tribunal, despite having noted Rule 1-A of the Indian Railway Establishment Code (Volume-I) as published on 21st March, 1951 reading:

Normally recruitment will be to the lowest grade of the lowest class but direct recruitment on limited scale to intermediate grades will be made in accordance with instructions laid down by the Railways Board from time to time.

ultimately failed to bear in mind the aforesaid provision. Rule 1-A which had come to be made pursuant to the power conferred by the proviso to Article 309 and having stated that the recruitment in the lowest grade will be made in accordance with the instructions laid down by the Railway Board from time to time, the rule itself permitted the Railway Board to issue necessary instructions, and the memorandum of 1987 having been issued by the Railway Board in exercise of this power, we hold that Board had valid authority to issue the memorandum.

7. However, it needs to be noted that in these petitions there is no allegation of any breach of any statutory rules or regulations; on the contrary the issue in question is essentially an internecine trade union dispute. In these premises, for adjudicating and settling eligibility to attend the Meetings of the Central Council of URMU, it would not be proper to take recourse to the writ jurisdiction of this Court.

IS WRIT JURISDICTION AVAILABLE
FOR SETTLING DISPUTED QUESTIONS

OF FACT

8. Learned Counsel for the Respondent have stoutly opposed the writ petitions on the grounds that several disputed questions of fact have cropped up, which can be decided only in ordinary civil proceedings. It is vehemently argued that representation to the Central Council of URMU is itself in question, and that who are the legitimate delegates cannot be decided on the basis of affidavits alone. In other words the correctness of the Voters' List to the Central Council of URMU is itself in hot contest. Would it be correct to state, as a legal proposition, that as soon as the Court encounters disputed questions of fact it should give up any enquiry or investigation in its exercise of extraordinary jurisdiction under Article 226 of the Constitution, is to be immediately answered.

9. In *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , the following principles have been culled out and explained :

27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The court has imposed upon itself certain restrictions in the exercise of this power [See: *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*,]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

10. Mr. Maninder Singh has also drawn attention to the following paragraph in *State of U.P. v. Johri Mal JT 2004 (Suppl. 1) SC 443*. However, this decision does not encourage the Writ Court to venture into uncharted water of disputed facts:

30. It is well-settled that while exercising the power of judicial review the court is

more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can re-appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of facts by the decision maker.

11. On the amplitude and absence of any frontiers of the extraordinary powers of the High Court under Article 226 of the Constitution it would also be relevant to revert to the enunciation of the law in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*,

18. The first contention urged by learned Counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission--both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath v. ITO* this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hotchtief Gammon v. State of Orissa* this Court held that the powers of the courts in England as regards the

control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester v. Regina* said: But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable. The principle enunciated in the above case was approved and followed in *King v. Revision Barrister for the Borough of Hanley*. In *Hochtief Gammon* case this Court pointed out (at p. 675 of Reports : SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield v. Minister of Agriculture, Fisheries and Food* the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's direction was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th edn., vol. I, para 89, it is stated that the purpose of an order of mandamus is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

20. There is thus no doubt that the High Courts in India exercising their

jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

There is, in this analysis, no reason for the Writ Court to hesitate to exercise extraordinary its jurisdiction, even if it requires a quick decision pertaining to the facts germane to the issue, if the circumstances so compel. It ought not to be overlooked that the jural principle of not venturing into a determination of disputed questions of fact is a limitation imposed by Judges upon themselves, which cannot be relied upon any party who does so in order to defeat the ends of justice.

12. On behalf of Respondents reliance has been placed on this vexed question of law on the decision in *Manager, St. Thomas U.P. School, Kerala and Another Vs. Commissioner and Secretary to General Education Department and Others*, , where the Apex Court went to the extent to "record our disapproval of the High Court entertaining the writ application at all. Both the Single Judge and the Division Bench have determined what were clearly disputed questions of fact without the benefit of a full-scale trial. The appellants have drawn our attention to evidence which, according to them, conclusively proves that the School was a minority institution and which was not considered by the High Court. We do not propose to commit the same mistake as the High Court. Given the nature of the dispute, the issue of the status of the School should have been left to the fact-finding authorities whether executive or judicial for determination in jurisdictions equipped for the purpose". The same enunciation of the law is to be found in *Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another*, , in which it had been observed that "a disputed question of fact normally would not be entertained in a writ proceeding". In AIR 1997 993 (SC) , the Apex Court frowned on the approach of the Single Judge of the High Court in continuing to exercise writ jurisdiction in circumstance where the facts were seriously in dispute. It was opined that "where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of fact".

13. Similar views have been expressed in R.K. Panda and Others Vs. Steel Authority of India and Others, where the Court observed that "whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smokescreen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for the High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits."

14. In view of decisions of the Supreme Court on both sides of the watershed a careful analysis would lead to the conclusion that if the factual matrix can be formulated only after an intricate and detailed consideration of rival stands, then exercise of the writ jurisdiction would be misplaced and inexpedient. However, if the Court feels compelled by the call of justice and good conscience to decide factual controversies which are superficial in nature, the self-imposed restrictions would not act as an unsurmountable obstacle.

15. This Court had considered it pragmatic to appoint a Court Commissioner to settle the membership issue in terms of the following order passed on 20.9.2004:

A List of names of 423 persons, common to both factions of URMU, has been filed. The names of 371 persons still remain to be settled. Mr. Panda, learned Senior Counsel for the General Manager, Railways, states that the said Officer is reluctant to enter upon the controversy pertaining to the preparation of the names of the remaining 371 persons. Learned counsel for the parties, on instructions, are agreed that this task may be entrusted to a retired Judge of this Court.

I accordingly request Hon"ble Mr. Justice (Retd.) Devinder Gupta, Chief Justice of Andhra Pradesh High Court, C-89, NDSE Part II, New Delhi, Phone No. 51645589 to verify the candidature of the remaining 371 persons from the List forwarded by the Petitioner and Respondent No.3, whose Representative should appear before him on 28.9.2005 at 11:00 A.M. Fees are tentatively fixed at Rs. one lakh to be shared equally by the contesting Union parties. The list of remaining 371 candidates be filed in this Court within four weeks. Renotify on 26.10.2005.

16. Justice Devinder Gupta (Retd.) has forwarded his Final Report to the Court, which has resulted in the filing of Objections by the Respondents. In other words the names of 371 candidates settled by Justice Devinder Gupta continues to be hotly contested. Mr. Luthra, learned Counsel for the petitioners in CWP No.18090-104/2005 has argued that 146 eligible persons do not find mention in either of the Lists put up by the warring factions in the other Writ Petitions, although his clients were elected in 2002 as delegates to the Central Council. He has submitted that elections are required to be held to the General Body under Rule 56 and to the Central Council under Rule 28. Two questions immediately present themselves - (a) whether the List settled by Justice Devinder Gupta is

beyond the pale of challenge by any of the parties hereto and (b) whether this appointment is impervious to every objection including that it was made without jurisdiction.

17. So far as the second issue is concerned Mr. Maninder Singh has forcefully submitted that the appointment of the Court Commissioner was pursuant to the consent of all the parties recorded on more than one Court hearings and, Therefore, the Respondents are estopped from challenging it. He has cited a Division Bench decision in *Union of India Vs. Gulam Nabi Azad and Others*, , where even though no consent had been given by the party concerned, since there was no opposition to the subject order of the Additional District Judge, the High Court declined to interfere in the matter. At the other end of the spectrum in *Smt. Isabella Johnson Vs. M.A. Susai*, , the Court has held that where a Court has no jurisdiction in law it cannot attain it by applying principles of *res judicata*, and that there can be no estoppel on pure questions of law such as possession of jurisdiction. Similar pronouncements have been made in *Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others*, in that it has been observed that since the probate Court has exclusive jurisdiction on the authentication of a Will, neither a Civil Court nor an arbitrator, even with the consent of parties, can exercise this function. In *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*, , the maxim *actus curiae neminem gravabit* (the act of Court harms no one) was held not to insulate from attack a High Court direction to the State Government to grant sanction for a particular prosecution. Very recently the Apex Court has provided a Restatement of the law in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, in these words:

29. Ms. Malhotra, then contended that Section 21 of the Code requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and the written statement was filed by the defendants in 1989 wherein jurisdiction of the court was "admitted". On the basis of the pleadings of the parties, issues were framed by the Court in February 1997. In view of the admission of jurisdiction of the court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of the written statement was filed raising a plea as to the absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned Counsel to *Hiralal Patni v. Kali Nath and Bahrein Petroleum Co. Ltd. v. P.J. Pappu*.

30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point

that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

31. In Halsbury's Laws of England, (4th Edn.), Reissue, Vol.10, para 317, it is stated:

317. Consent and waiver.--Where, by reason of any limitation imposed by a statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled .Where the court has jurisdiction over the particular subject-matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent.

32. In Bahrein Petroleum Co. this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

33. In Kiran Singh v. Chaman Paswan this Court declared : (SCR p. 121)

It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

34. The case on hand relates to specific performance of a contract and possession of immovable property. Section 16 deals with such cases and jurisdiction of the competent court where such suits can be instituted. Under the said provision, a suit can be instituted where the property is situate. No court

other than the court where the property is situate can entertain such suit. Hence, even if there is an agreement between the parties to the contract, it has no effect and cannot be enforced.

18. In this analysis, since the conclusion that has already been arrived at is that trade union disputes are not amenable to writ jurisdiction, the fact that the Court had appointed a Commissioner with the consent of parties, would not clothe that decision with jurisdiction. A decision given without possessing jurisdiction would be a nullity. The answer to the second issue formulated in paragraph 16 above that the appointment would lose legal efficacy. On the first issue I am in no manner of doubt that a Report or opinion given by a Commissioner appointed by the Court would be open to acceptance or rejection after due consideration of the Court. Normally, unless the Court comes to the conclusion that the Objections are frivolous, the Writ Court would abjure embarking into the arena of disputed facts.

19. A number of grounds have been raised by way of opposition to the entertaining and consideration of the writ petitions including the availability of an alternative remedy by way of an appeal, but I do not propose to go into those issues since the above discussion appears to me to be sufficient to decide this batch of matters. The ubiquitous opinion of High Courts in this country is that trade union disputes are not amenable to writ jurisdiction. Alternatively stated, these types of disputes do not partake of a public law character and are inherently and intrinsically private disputes. I cannot accept the argument of Mr. Maninder Singh that because the Railway Administration is called upon to grant leave and provide other assistance for attendance of union meetings, a public law character is superimposed on the trade union disputes. I also cannot accept that since it is in general public interest that affairs of URMU proceed on a peaceful and smooth pace that inter se trade union disputes would automatically wear the mantle of public law. Having arrived at this conclusion since it is ordinary civil courts which would have jurisdiction in regard to disputes pertaining to elections of a trade union, the appointment of the Commissioner to prepare the lists was without jurisdiction. On the strength of *Harshad Chimanlal Modi* the fact that all parties had consented to this appointment would not act as an estoppel to the challenge subsequently been mounted against such appointment. The wisdom of leaving this genre of disputes to be adjudicated by civil courts, after recording of evidence, is illustrated from the fact that even though the List has been prepared by the Court Commissioner, a number of serious, not frivolous, objections have been raised against the List. If this Court were to further adjudicate these disputes it would lead to yet another error in the exercise of jurisdiction. The controversies pertaining to the factual matrix are not of a superficial nature, as can be duly decided by the Writ Court. Nor have they been raised only to oust or obstruct the exercise of the extraordinary powers of this Court predicated only on a sham or flimsy denial. On the interplay of three facts viz. absence of public law character, presence of disputed questions of fact and the ubiquitous view that it is not expedient to invoke writ jurisdiction in trade union matters, these petitions

must be dismissed.

20. The fact that the Respondent URMU had agreed to the appointment of a Court Commissioner cannot be overlooked. The Petitioners other than Gulshan Kumar have been led to expending time and money in proceedings before the Learned Court Commissioner, principally because the Respondent URMU had agreed that the List prepared by the Court Commissioner would be final and binding. The Respondent URMU, Therefore, must be burdened with the costs which have been incurred by these petitioners except Petitioner in W.P. (C) No. 18090-18104. It is adjudged at Rs. 50,000/- which must be paid by Respondent URMU to the said Petitioners within three weeks from today. There shall be no order as to costs in W.P. (C) No. 18090-18104. All these writ petitions are dismissed as not amenable to writ jurisdiction under Article 226 of the Constitution. This dismissal shall not preclude or prejudice the rights of any of the parties from filing ordinary civil suits or pursuing any other available legal remedy.