

(2008) 07 BOM CK 0143

In the Bombay High Court

Case No : O.O.C.J.W.P. No. 188 of 2008 and W.P. No. 187 of 2008

PRS Permacel Private Limited

APPELLANT

Vs

Johnson and Johnson Employees Union and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(2), 12, 12(5)

Citation : (2008) 5 ALLMR 505 : (2008) 3 LLJ 973

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : J.P. Cama, Ajit Kapadia and G.S. Shetty, instructed by Crawford Bayley and Co, for the Appellant; Arshad Shaikh and Mahesh Londe, instructed by Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—PRS Permacel Private Limited, a company incorporated under the provisions of the Companies Act, 1956 has approached this Court under Article 226 of the Constitution of India praying that the Court be pleased to issue appropriate writ, order or direction declaring the order of reference dated June 22, 2007 as illegal, invalid, arbitrary and violative of. Article 14 of the Constitution of India and, thus, the same be set aside as not even being maintainable. Besides seeking striking down of the said order, it has also been prayed that the Presiding Officer, Industrial Tribunal, Mumbai be also directed not to proceed with the reference proceedings in furtherance to the order dated June 22, 2007. The challenge to the order dated June 22, 2007, inter alia is on the following grounds:

(a) There is no master and servant relationship between the petitioner and members of the respondent No. 1. Thus, no reference could be made by respondent No. 2 and could not be proceeded with any further by respondent No. 3. To buttress this submission, it is also contended that even the members of the

union till today have not taken a clear stand as to whether they are the employees of the petitioner and/or the erstwhile company Johnson & Johnson which is stated to have been transferred to the petitioner.

(b) The order of reference suffers from an error of jurisdiction in as much as the competent authority before making the reference should have examined the question of employer-employee relationship.

Therefore, the order of reference is arbitrary and made without application of mind.

2. We may refer to the necessary facts giving rise to this writ petition.

3. The petitioner claims that in August, 1999, they acquired Permacel Division of Johnson & Johnson Limited for a consideration in excess of Rs. 29 crores. They entered into an agreement for acquisition of the undertaking wherein it was also agreed that petitioner would take over the services of the workmen who were employed in the said undertaking by the Johnson & Johnson. It is averred by the petitioner that despite dialogues and negotiations, a final settlement concerning the terms and conditions of the employment of the workmen could not be arrived at due to the unreasonable attitude of the workmen. This transfer of the undertaking itself was challenged by the Union which maintained that its members were workmen of Johnson & Johnson. This transfer was questioned on different grounds including a fraud on the workmen, who even filed a complaint before the Industrial Court terming the transaction as a sham one but the complaint was dismissed which order was challenged by the workmen in a writ petition filed before this Court being Civil Writ Petition No. 1312/2004 which came to be dismissed vide order dated July 14, 2004. The workmen again preferred a review petition against the said order being Review Petition No. 56/2004 which was dismissed and even appeal preferred against that order was also dismissed. The matter was taken upto the Supreme Court in SLP being C.R. No. 4790/2006 which was subsequently withdrawn. There was promise in carrying on the business of the petitioner company still its production was adversely affected because of the attitude of the workmen. Hence at the instigation of respondent No. 1, the workmen did not give production as per the machine capacities and the agreed norms of production and they did not accept directions and instructions of the supervisors and managers and indulged in indiscipline of various nature, all on the grounds that the petitioners managers and supervisor had no authority over them. As many as 30 workers gave such individual undertakings and joined work and balance 98 workers refused to give such undertaking and did report for work. It is further the case of the petitioner that some of the workmen who were employees of the Johnson & Johnson even resigned and were removed from the membership of the respondent No. 1. The respondent No. 1 union vide their letter dated July 31, 2006 raised a dispute against both the petitioner herein and the erstwhile company Johnson & Johnson. The dispute related to furnishing of an undertaking and the working conditions. The workmen also persisted with their claim that the petitioner were not the

employers of the workmen employed at the said undertaking. This stand was opposed by the petitioner claiming that the dispute was nonexistent and dispute in relation to employer and employee relationship had not been resolved and as such, the proceedings in furtherance to the notice dated July 31, 2006 did not continue.

4. During the pendency of the said demand letter, the workmen even filed writ petition before this Court. The writ petition, being Civil Writ Petition No. 2028/2006 came up for hearing before a Division Bench of this Court and the same was dismissed vide order dated August 29, 2006 which reads as under:

1. It is grievance of the petitioner that though they have raised a dispute before respondent No. 1 is not taking steps to initiate conciliation proceeding.

2. The petitioners earlier were contending that they were employees of M/s. Johnson & Johnson Ltd. and not of respondent No. 3. The Industrial Court held against them. The Learned single Judge, where the petition was filed, has rejected the contention. Appeal preferred before the learned Division Bench has been dismissed. The SLP filed has been withdrawn. In other words, the contention of the respondent No. 4 that Johnson & Johnson Limited is their employer stands concluded.

3. On behalf of the petitioners, the learned Counsel submits that the order was taken by playing fraud on the Court. It is not for this Court to go into that issue. The petitioners are at liberty to take steps which they may be entitled to. If the matter is before the Conciliation Officer, the Conciliation Officer is bound to proceed according to law. Considering the earlier order of this Court, this would not be a fit case to exercise our extraordinary jurisdiction.

4. The present petition stand dismissed.

5. Parties to act on the authenticated copy.

5. According to the petitioner, the respondent No. 1's contention had not been accepted by any Court including the Supreme Court where they withdrew the SLP which was against the order of Division Bench of this Court passed in Civil Writ Petition No. 1312/2004. After passing of the order dated August 29, 2006, the conciliation proceedings progressed but resulted in filing of failure report which was submitted by Conciliation Officer to respondent No. 2. Respondent No. 2 thereafter passed the order dated June 22, 2007 referring the dispute for adjudication to the Industrial Court at Bombay. The appropriate Government, on the recommendations made by the Labour Commissioner, in whose view the settlement between the parties remained unsuccessful, referred the matter to the Industrial Court vide its order dated June 22, 2007. The dispute, as stated in the schedule to the said order, reads as under:

Schedule

Whether the M/s. PRS Permacel Pvt. Ltd., company's Notice dated July 29, 2006

is legal and justified and whether the action of the company pursuant to Notice dated July 29, 2006 is an illegal Lockout. If yes, what relief, are the workmen entitled to?

Whether the workmen are entitled for a direction to the company to allow workmen to perform their normal duties without insisting upon a pre condition that workmen should give/must sign assurance/undertaking for entry in to the said plant at Safed Pool, Andheri Kurla Road, Andheri (E), Mumbai 400072 for performing their duties on and from July 29, 2006.

Whether the workmen are entitled to full wages/salaries and all attendant benefits w.e.f. July 29, 2006.

6. The legality and correctness of the above order of reference is challenged in this writ petition with the prayers referred herein above. The respondent No. 1 has not really controverted the facts except to the extent that the transfer in favour of the petitioner is illegal, bad in law and for which they have taken appropriate legal action before the competent forum. Further, it is averred that the undertaking sought by the company had been incorrectly worded but the workmen vide their letter dated September 21, 2006 even signed an undertaking which clearly postulated that the workmen will continue to give normal production, maintain full discipline and there would be no casualty of discipline due to the contention that the company is not their employer. Despite giving such undertaking, the petitioner has not acted fairly. It is admitted that the demand letter was submitted to the Commissioner on December 11, 2006 as no conciliation was possible despite negotiations and keeping in view the stand of the company firstly, the matter remained under Personal Management Advisory Services which culminated into issuance of letter dated February 11, 2008 vide conciliation in regard to settlement between the parties.

7. Keeping in view the controversy created with regard to employer-employee relationship, during the course of hearing, the Court had observed that the workmen may spell out their clear stand in regard to this aspect of the case. While an affidavit was filed by the Respondent Union on February 14, 2008 wherein besides touching upon the content of the undertaking which they were required to furnish and which they actually furnished, they also stated that all the workmen were ready and willing to work while continuing the discipline and cooperate in meeting normal production standards. Relying upon the order dated August 29, 2006 and a clarificatory order dated September 11, 2006 passed in Writ Petition (Lodging) No. 2028/2006 it is stated that the contention of respondent No. 4 in that writ petition averred that they were employees of Johnson and Johnson Limited stood concluded. In regard to plea of fraud, they were granted liberty to take steps which they are entitled to. If the matter is before the Conciliation Officer, the Conciliation officer is bound to proceed in accordance with law. They have stated that they will continue to work as if the petitioner is their employer as they have done continuously since August 10, 1999 but without prejudice to their plea in the other proceedings that they were

and continue to be the employees of Johnson & Johnson Limited, as according to them, the transaction that took place was not legal. There are other legal proceedings pending between the parties before the appropriate forum. In the earlier litigations, the parties had approached this Court under Article 226 of the Constitution of India, and vide its order dated August 29, 2006 the Court had specifically noticed that upon the plea of the workmen that they were employees of Johnson & Johnson Limited and not of the present petitioner. The Industrial Court had not accepted that plea against which order the learned single Judge rejected the contention. The Appeal before the Division Bench was also dismissed and the Special Leave Petition, as noticed earlier, was also withdrawn. In other words, the contention of the members of the Union stood concluded, but it also proceeded to add that the said order was obtained by playing a fraud and the petitioners were at liberty to take steps which they were entitled to and if the matter was pending before the Conciliation Officer, he would proceed in accordance with law. While taking some benefits of these observations, the workmen contended that this question has not been concluded finally and can be examined by the appropriate forum in accordance with law. Reliance was also placed upon the notice dated July 31, 2006 served by the Union on August 7, 2006 stating that there was illegal lock out and with a clear clarification that read as under:

It is clarified that for the purpose of the present demand the dispute relating to employer employee is not being raised and the present letter of demand ought not be considered as a waiver of the right of the workmen to raise such disputes as may be permissible at law including the issues which according to the Companies have allegedly come to an end. It is stated that no employer or person claiming to be employer can prevent approach to Court of law for redressal of grievance of workmen.

Hope wiser Counsel prevails and the workmen are not forced to initiate further proceedings in this regard.

8. The petitioner company had also issued a notice dated August 17, 2006 indicating various facets of the litigation in relation to transfer and problem of production and discipline. The consent letter which was required to be executed by the workmen was replied to by the union vide Exhibit "I" stating that they would not execute the same and later submitted the amended undertaking as mentioned above.

9. While relying upon the judgment of the Supreme Court in Haryana State Coop. Land Development Bank Vs. Neelam, , it was contended on behalf of the petitioner company that the plea of estoppel, waiver and acquiescence are applicable to proceedings before the Labour Court and the scheme of the Act does not exculpate an individual from responsibilities of his conduct. His conduct has to be taken into consideration for granting or declining a relief. As the matter of employer-employee relationship stood fully settled, the order of reference will be vitiated. It is further argued that the High Court is competent to examine

validity of a reference as the Industrial Court does not have the power to examine the validity of a reference and it is only to answer or adjudicate the reference. In support of this argument, reliance is also placed on National Engineering Industries v. State of Rajasthan and Ors. (2002) 1 SCC 371. The impugned order also suffers from the infirmity of non-application of mind as without determination of employer-employee relationship, the reference is untenable. Support is taken from the judgment of the Supreme Court in Hochtief Gammon Vs. State of Orissa and Others, .

10. According to the Respondent Union, the order of reference is proper and is within the four corners of law. The reference including the dispute of employer-employee is wide open and has not been finally concluded particularly in face of their plea that the orders were obtained by fraud. There is no ambiguity in the order of reference and the Industrial Court/Labour Court has to adjudicate the matter on merits and it will not be appropriate for this Court to examine the question of preliminary objection as regard to maintainability of reference before the Industrial Court particularly in facts and circumstances of the present case. Even when two for a are available, the Courts can certainly say which is the more appropriate forum to effectively get it adjudicated.

11. There has to be, in reality, a relationship between employer and the complainants where they plead unfair labour practice. Industrial dispute has to be raised before the Tribunal under the Industrial Disputes Act for issue relating to actual nature of employment to be sorted out. Reliance is placed on the case of Shambu Nath Goyal Vs. Bank of Baroda, , Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, and Sarva Shramik Sangh Vs. Indian Smelting and Refining Co. Ltd. and Others,

12. In the present writ petition, neither we are expected nor do we propose to deal with the merits of the various contentions raised in this Petition which are directly pending before the competent forum. The short question that we need to consider is whether the order of reference dated June 22, 2007 suffers from such a legal error that it is palpably without jurisdiction or is legally untenable.

13. The appropriate Government, while exercising the powers of making a reference u/s 10(1) of the Industrial Disputes Act has limited jurisdiction and cannot travel into the field of determining the controversies on merits by taking the evidence or adjudicating the controversies between the parties. Of course, it may satisfy itself as to the existence of the essential ingredients for making a reference of an industrial dispute to the appropriate forum/Court. We may refer to a recent judgment of this Court in the case of National Organic Chemical Industries Limited v. State of Maharashtra and Ors. AIR 2007 Bom. 188. The Court discussed various judgments of the Supreme Court and the High Courts on the subject and enunciated the principles as under:

5. Having stated the factual matrix of the case we will prefer to examine the law in relation to the ambit and scope of Section 10(1) of the Act and the limitations

of judicial review in relation to an order of reference referring an industrial dispute to the Labour Court. In the case of *Shri Subhash Chand Vs. Govt. of NCT and Another*, , a Division Bench of the Delhi High Court had an occasion to discuss, in some elaboration, the law on the subject. The Court has held as under:

Reference to the development of law in this regard is necessitated for the reason that somewhat divergent views have been expressed by the Courts while explaining; the scope and limitations of jurisdiction vested in the appropriate Government while exercising its administrative power of making a reference u/s 10(1)(c) of the Act.

6. Reference to the decision of the Constitutional Bench of the Supreme Court in the case of *State of Madras Vs. C.P. Sarathy and Another*, can be usefully made at the very outset. It was observed:

But, it must be remembered that in making a reference u/s 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.

7. Explaining the ratio of the decision in *State of Madras v. C.P. Sarathy (supra)*, in *Western India Match Company Ltd. Vs. Workmen*, :

In the *State of Madras v. C.P. Sarathy (supra)*, this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative functions. It was so held presumably because the Government cannot go into the merits of the dispute its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

8. After referring to the earlier decisions on the subject in *Shambu Nath Goyal Vs. Bank of Baroda*, it was held that, in making a reference u/s 10(1), the appropriate Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character.

Thus, there is a considerable body of judicial opinion that while exercising power of making a reference u/s 10(1), the appropriate Government performs an administrative act and not a judicial or quasi-judicial act.

9. The scope and scheme of Sections 10 and 12 of the Act were also examined by the Supreme Court in *State of Bombay Vs. K.P. Krishnan and Others*, . It was held therein as under:

Even if the appropriate Government may be acting u/s 12(5) by itself and independently of Section 10(1) does not confer power on the appropriate Government to make a reference. While deciding whether a reference should be made u/s 12(5) it would be open to the appropriate Government to consider, besides the report of the Conciliation Officers other relevant facts which may come to its knowledge or which may be brought to its notice. Just as discretion conferred on the Government u/s 10(1) can be exercised by it in dealing with industrial disputes in regard to nonpublic utility services even when Government is acting u/s 12(5), so too the provisions of the second proviso to Section 10(1) can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service u/s 12(5).

10. It was further held by the Supreme Court that whether Section 12(5) is construed as making it obligatory on the Government to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion, if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a Court of law. Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expedience.

....

32. It appears to be a settled principle of law that while the appropriate Government is exercising its power to make a reference u/s 10(1) of the Act, such power, is wide but has definite limitations in terms of the prescribed law. The Government would form an opinion as to relationship, and whether a dispute exists or is apprehended. This exercise of power is purely administrative in nature and must clearly be understood with definite distinction from a judicial or a quasi judicial power. Government cannot abrogate on to itself the power to adjudicate any question. The formation of opinion has to be prima facie based upon records before the Authority as well as the report submitted by the Conciliation Officer u/s 12 of the Act. An element of expeditious disposal and determination of industrial dispute is contemplated under various provisions of the Act and even in a case u/s 12(6) of the Act where the Conciliation Officer is required to submit a report within 15 days of the commencement of conciliation proceedings. For granting any extension of time there is a duty casted upon the Conciliation Officer to extend the period upon agreement between the parties appearing before the Conciliation Officer. There have been cases where the Courts have taken the view that a serious dispute with regard to relationship of employer and employee could not also be gone into by the appropriate Government in exercise of its powers u/s 10 of the Act and such matter requiring adjudication should be referred to the Labour Court. With regard to the restricted scope of Section 10 of the Act, the consistent view of the Supreme Court has

been that the Appropriate Government should exercise powers within the limited domain specified under the provisions of the Act and should not adjudicate matters which would otherwise fall within the domain of the Labour Court or Industrial Tribunal. Furthermore, the appropriate Government must state reasons for declining a reference, particularly where it declines reference, in furtherance to the demand raised by a workmen. The material it considers should be germane to the dispute and not extraneous. A view has also been taken that a patently frivolous, perverse, vexatious, and a stale dispute, which does not remain to be an industrial dispute, could validly be declined by the appropriate Government: In this regard, amongst others, reference can be appropriately made to the judgment of the Supreme Court in the case of *Bombay Union of Journalists* (supra).

33. The above decision illustratively places the development of Industrial Law in regard to concepts aforementioned and clearly provides the precepts which could usefully be applied to different cases which may come up for determination before the Court. Analysis of the above decisions clearly show that the appropriate Government is vested with administrative power to make or decline a reference. Such power is to be exercised in line with the law enunciated by the Court and essentially must not transgress its jurisdiction and travel into the matters of final determination which would squarely fall within the jurisdiction of the Labour Court or Tribunal. The expression "It may at any time" does take the jurisdiction of the appropriate Government to make a reference beyond the restrictions of any limitation in terms of the period but still unexplained-prolonged delay could prove fatal to the case of the workman either in terms of denial of reference or denial of back wages for entire or part of the period in question. The appropriate Government does not exercise; its powers under the provisions of the Act as a mere administrative formality or a post office. Application of mind for valid and appropriate reasons is the prerequisite to denial or making a reference in terms of these provisions. The reasonableness in terms of period is sufficiently adopted under the scheme of this Act. On the one hand there is no specific limitation stipulated for raising a demand or making a reference but the; proceedings of the authorities immediately preceding the reference as indicated in Section 12 of the Act and post proceedings or determination of the dispute again within the specified time u/s 10(2)(a) of, the Act shows the legislative intent for adherence to the prescribed schedule of time and expeditious disposal of the industrial dispute. One of the irresistible conclusion of the above discussion is that the concept of, reasonable time has great application to objective implementation of various provisions of this Act. The unreasonable and unexplained delay may weigh with the authorities as well as with the Courts while dealing with the matters. Thus, it may not be quite correct to argue that Government would have no jurisdiction to decline reference of an industrial dispute, which has become stale and has extinguished because of unexplained prolonged delay. The time may not be of essence but certainly is a relevant factor to be taken into consideration by the appropriate Government at

the appropriate stage.

34. The above enunciated principles and their objective appreciation in their correct perspective unambiguously demonstrate the guidelines for determining the issues which may arise before the Courts as well as the appropriate Government when it exercises its powers of reference under the provisions of Section 10(1)(c) of the Act. In addition to the five principles enumerated by the Full Bench in the case of *Radhey Shyam* (supra), I would also refer to the following principles as well:

(a) The dispute is so belated or stale that direct consequence thereof is the extinguishment of the industrial dispute itself. Existence of the dispute being condition precedence to the reference, the power of the Government to decline a reference would not stand wiped out just because the provisions of the Section uses the expression "at any time".

(b) The alleged dispute is so stale that it will be so prejudicial to either party to dispute that it would be unfair unjust to make a reference. Furthermore, it may not be possible for the Labour Court/Tribunal to mould the relief because of unexplained prolonged delay. While exercising its administrative power the Government must strictly confine itself within the domain of forming an opinion without traveling into the merits of the case and determination thereof. It must not usurp the power of the Tribunal.

35. In the case of *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, the Supreme Court emphasised the scope of the powers and jurisdiction of the Industrial Tribunal vis-a-vis the power of the Government to make a reference. The Court held as under:

The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the Management, the Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of the Workers' Union that the tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings u/s 12 of the Act and as such was not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the, settlement was arrived at during the conciliation proceedings.

36. Despite the fact that the provisions of the Industrial Disputes Act do not provide any limitation, it will always be appropriate for a workman to approach the concerned authorities for making a reference at the earliest opportunity. This would serve the dual purpose. Firstly, expeditious determination of a reference/case by the Competent Forum which is the object of the Act and, secondly, the

employer or the concerned authority would not be able to take the plea of destruction/non-availability of record. Unexplained long delays as already noticed can be of some consequence particularly when the workman had taken no steps whatsoever to seek redress from the concerned authorities. Another Full Bench judgment of the Punjab & Haryana High Court in the case of Ram Chander Morya v. State of Haryana and Ors. 1999 (1) CLJ 133 had also dealt with this concept at greater details and held as under:

42. After taking into consideration the various provisions of law, stated above, and after taking into consideration the words "clearly belated" mentioned by the Supreme Court in *Bombay Union of Journalists*" case (supra), we would merely indicate that reasonable time in case of reference of an industrial dispute by an appropriate Government to the Labour Court or the Tribunal will be five years. In other words, if any industrial worker or union or any other person on behalf of the worker does not apply to the appropriate Government for reference of an industrial dispute u/s 10(1) of the Act to the Labour Court or the Tribunal for a period of five years and tenders no explanation for the delay beyond five years, this delay beyond the period of five years shall be taken as clearly belated.

43. We have a note of caution here that if a worker or the union pleads/furnishes even a slightest explanation for delay in submitting his/its request to the appropriate Government for reference of his/its dispute to a Labour Court or the Industrial Tribunal then the appropriate government shall leave the determination of the question of belatedness to the labour Court or the Industrial Tribunal. It will then be the province of the Labour Court or the Industrial Tribunal to decide the question of reasonable delay in filing the application after taking into consideration the relevant material placed before it. Now we come to the individual cases.

37. It is a social welfare legislation and, in view of the above enunciated principle of law essentially should receive an interpretation which would help in achieving the object of the statute that is protecting the workman against exploitation and prolonged litigation.

38. It will be appropriate to conclude that the dimensions of the powers vested in the appropriate Government u/s 10(1)(c) of the Act are wide which require proper application of mind in consonance with the above enunciated principles but in no way the appropriate Government could usurp or abdicate to itself the powers of determination which are exclusively vested on the Labour Court/Tribunal. Long delays by itself may not be sufficient to deny the reference requested for by the workman unless it is so seriously prejudicial to the other party as to permit the workman to take undue advantage of his own conduct or the dispute is so belated and stale that in the eyes of law it has extinguished or lost its substance.

14. Reliance is placed upon the case of *National Engineering Industries Ltd. v. State of Rajasthan and Ors.* (supra), by the learned Counsel appearing for the

petitioner does not really forward the case of the petitioner. The High Court has the jurisdiction to entertain a writ petition but this jurisdiction normally would not be used where the matter can appropriately be adjudicated upon by the Labour or Industrial Courts as the case may be. There is no dispute to the fact that failure report has already been submitted to the appropriate Government and the appropriate Government has made a reference in exercise of its power u/s 10 of the Act. There are certain-facts which would take away the jurisdiction for making a reference but even-on those facts, the parties are not ad idem.

15. According to the workmen, they have accepted the present petitioner as their employer, of course, subject to determination of their complaint by the appropriate forum as regards to the transfer of the unit and Johnson & Johnson being their employer. As far as giving of any undertaking is concerned, the record shows that the workmen objected to the format of the undertaking whereafter they gave an undertaking, which according to them, needs all the necessary requirements including working with discipline and achieving the requisite production target.

16. What is the effect of the orders passed by the Courts, in previous litigation, can safely be considered by the Labour Court while adjudicating the reference made to it by the appropriate Government vide order dated June 22, 2007. The dispute referred has two facets. Firstly, with regard to the alleged lock out being illegal and secondly, the rights of the workmen to perform their duties without insisting upon the alleged undertaking as a condition; precedent for performance of substitutes and resultantly, the wages and salaries which the workmen are entitled to. The reference made by the Government is so wide that the parties can safely adduced appropriate evidence to substantiate their respective trends, determination of which without such evidence is hardly possible. The exercise of jurisdiction by the appropriate Government, the parties could not have been asked to produce documentary and oral evidence. The controversies raised in the present writ petition are of such nature that it will not be just and fair to pronounce upon them without affording opportunities to the parties to lead evidence. In fact, it is nobody's case that no dispute raised between the parties.

17. The main emphasis of the petitioner is that the workmen are not clearly stating as to whose employees they are. According to the workmen, they have accepted in the present matters that they are employees of the petitioner subject to their objections pending before different fora. The petitioner company has also issued notice to the workmen as they are employees, of course, with some other reservation. So ex facie, it is not a case where there is not even an iota of documents on record to indicate existence of such nature but as we have already noticed that it is not for this Court to travel into such controversies in exercise of its powers under Article 226 of the (Constitution of India. In fact, in Wyeth Employees Union v. Araine Orgachem Pvt. Ltd. and Ors. 2007 CLR 315, this Court had directed the appropriate Government to consider making of a reference which it had felt on the ground that the workmen having taken the

benefit of the various documents their existed no relationship of employer-employees between the parties.

18. The workmen had taken up the ground of fraud and they were coerced into signing the scheme. It was held that the Government has to form an opinion as to the existence of employer-employee relationship and whether the dispute exists or is apprehended. Thus, the jurisdiction of the appropriate Government has limited scope. Of course, it is not to be exercised in a mechanical manner. In the case of National Organic Chemical Industries Limited v. State of Maharashtra and Ors. (supra), in somewhat similar circumstances the Court had dismissed the writ petition and directed that the matter may proceed before the appropriate Industrial/Labour Court which was further directed to determine the questions and controversies raised before it in accordance with law. In some cases, the Industrial Court, while answering the reference made to it by the appropriate Government u/s 10, may have to decide ancillary questions and there will be no legal impediment in doing so.

19. For the reasons aforestated, we decline to quash the order dated June 22, 2007 and the petition is dismissed without any order as to costs. However, we make it clear that any observation made in this order will in no way influence the proceedings in exercise of its discretion by the concerned Industrial Court.

20. As regards Writ Petition No. 187/2008, which has been listed alongwith the above petition viz. Writ Petition No. 188/2008, the only difference is that the order of reference dated March 22, 2007 is with regard to payment of bonus and additional bonus for the calendar year ending December 31, 2005. Here too, we decline to quash the order dated March 22, 2007 and dismiss the petition with no order as to costs.