

(2011) 04 GUJ CK 0216
In the Gujarat High Court
Case No : S.C.A. No. 16172 of 2003

Ralchem Limited

APPELLANT

Vs

Ajit Balakrishna Kadu and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(5)
Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(4), 12, 12(5)

Citation : (2012) 1 LLJ 753

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Palak H. Thakkar, for the Appellant; M.S. Mansuri and A.L. Sharma, AGP, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. H.M. Thakker for petitioner-company, learned Advocate Mr. M.S. Mansuri for respondent No. 1 on behalf 4 workmen and learned AGP Mr. A.L. Sharma for respondent No. 2. In present petition, petitioner has challenged order of reference passed by Assistant Commissioner of Labour, Bharuch while exercising power u/s 10(1)(c) of I.D. Act, 1947, dated July 31, 2003.

2. Affidavit-in-reply is filed by one Shri Ajit Balkrishnan Kadu, who is respondent (Page-38 to 43).

3. Learned Advocate Mr. Thakker for petitioner-company submitted that petitioner-company has entered into settlement with Rasayanik Kamdar Sangh on January 10, 2002 and under said settlement, 94 employees including present 4 employees received all benefits. Said settlement briefly referred to as Voluntary Separation Scheme which is annexed to present petition as Annexure-B. The present 4 workmen, those who have raised dispute which referred for adjudication, Shri A.B. Kadu received ` 2,95,000/-, Shri J.T. Modi received ` 2,95,000/- and Shri D.B. Singh received ` 3 lacs and Shri M.M. Mansuri also

received ` 3 lacs in pursuance to aforesaid settlement.

4. Learned Advocate Mr. Thakker submitted that a charter of demand (Page-32) raised by Rasayanik Kamdar Sangh has not been referred for adjudication by appropriate Government vide order dated January 25, 2002. Therefore, in present case, dispute is referred for adjudication is beyond jurisdiction of Assistant Commissioner of Labour, Bharuch and for that, Assistant Commissioner of Labour, Bharuch has no powers to pass such orders when matter has been settled between both parties in pursuance to settlement u/s 2(p) arrived at with Union and on that basis, benefits accrued thereon received by each respondent workman. He also submitted that identical dispute raised by one Shri D.R. Singh and other 50 employees subsequently after receiving amount as per settlement before Assistant Commissioner of Labour, Bharuch and Conciliation Officer, Bharuch which dispute has not been referred for adjudication by Assistant Commissioner of Labour, Bharuch vide his order dated June 30, 2004. He further submitted that aforesaid order of Assistant Commissioner of Labour, Bharuch is not challenged by any workman or Union to higher forum.

4.1 Learned Advocate Mr. Thakker has placed reliance on a decision of Apex Court in case of The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, . Relevant Head Note is quoted as under :

Before making a reference u/s 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended. In the present appeal we find that the State Government rightly approached the question whether respondent No. 1 was a workman. Unless this condition is satisfied no reference can be made. Also, on the above material on record the State Government rightly formed the opinion that respondent No. 1 was not a workman.

Before making a reference for adjudication of a dispute u/s 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

4.2 Learned Advocate Mr. Thakker has placed reliance on a decision of Apex Court in case of A.K. Bindal and Another Vs. Union of India (UOI) and Others, . Relevant observations of aforesaid decision relied upon are in Para 34 which is quoted as under at pp. 1093 and 1094 of LLJ:

34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying

this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

4.3 Learned Advocate Mr. Thakker has placed reliance on a decision of Kerala High Court in case of Everestee v. District Labour Officer LNIND 1999 Ker 193 : 1999-II-LLJ-851 (Ker). Relevant observations of aforesaid decision which is quoted as under:

.....In our opinion, the appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation have been paid by the management and received by the appellant, he cannot be treated as a "workman" coming u/s 2(s) of the I.D. Act.

A perusal of the petition submitted by the appellant before the Labour Officer and also the Original Petition filed before this Court reveals that the appellant had accepted the benefits offered to him in pursuance of the Voluntary Retirement Package announced by the management and on being satisfied about the calculation and the quantum thereof, chosen to tender his resignation and thereafter, on diverse dates, received benefits confirming each time that the management had full and finally settled the account, thereby severing (sic severing) the employer-employee relationship once and for all.

4.4 Learned Advocate Mr. Thakker for petitioner-company also submitted that what material has been placed by petitioner before Assistant Commissioner of Labour, Bharuch, for that no averments made in present petition as well as no documents have been annexed by present petitioner. Therefore, petitioner company remained silent before this Court in respect to stand taken by company before Assistant Commissioner of Labour, Bharuch and also made it clear that whether particular contentions which are raised before this Court-whether same contentions were raised before conciliation officer or not, he is not sure to make clear statement.

4.5 Except that, no other decisions have been cited by him and no other submission is made in support of present petition.

5. Learned Advocate Mr. Mansuri appearing on behalf of respondents workmen submitted that affidavit-in-reply filed by workman may be considered. Relevant averments of aforesaid affidavit are in Para 2 to 10 are quoted as under : 2. Without prejudice to the above, I am further raising preliminary objection that

this petition is not maintainable in view of the judgments of Hon"ble Supreme Court in a case between Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, in a case between Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, & in a case between Mohd. Yunus Vs. Mohd. Mustaqim and Others, the Hon"ble Supreme Court in Mohammad Yunus v. Mohammad Mustaqim (supra) case in Para Nos. 6 and 7 of the decision observed that mere wrong decision without anything more is enough to attract the jurisdiction of the High Court under Article 227 of the Constitution. The supervisory Jurisdiction conferred upon the High Court under Article 227 of the Constitution is limited to "see that the inferior Court or the Tribunal Functions within the limits of the authority and not to correct the error apparent on face of the record much less error of law." The Hon"ble Supreme Court in Para. 7 of the aforesaid judgment observed that "in supervisory power under Article 227 High Court does not act as appellate Court/Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purport to be based, or to correct errors of law in the decision." In the similar manner, the Hon"ble Supreme Court in a case between Roshan Deen Vs. Preeti Lal, held that the scope of judicial scrutiny of the High Court is very limited and same is to see that justice has been done and then, the High Court should not interfere.

3. I therefore say and submit that the appropriate authority has properly and legally exercised the jurisdiction conferred under the law and more particularly under the Section 2-A read with Section 10(1) of the I.D. Act in making the administrative order of reference in question and hence there is no error of law as well as of the facts in the said order which calls an interference of this Hon"ble Court in this extraordinary discretionary jurisdiction conferred under the Constitution of India.

4. I say that the Division Bench of this Hon"ble Court in Ahmedabad New Textile Mill v. Textile Labour Association in GLR 1324 observed that the jurisdiction of High Court is limited and it cannot lightly, interfere with the orders passed by Competent Authorities in a decision in a case between State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others, observed that the, judicial review under Article 226 cannot be converted into Appeal. The judicial review is directed not against decision but is confined to examination of decision making process. When the issue is raised in judicial review is whether a decision is vitiated by taking into account irrelevant (sic factors) or neglecting to take into account of relevant factors or is so manifestly unreasonable that no reasonable authority entrusted with the power in question could be reasonably have made such a decision, the judicial review of the decision making process includes examination of matter of law of the relevance of the factors. Looking to the above binding precedents this Hon"ble Court may not interfere with the administrative order in question and reject the petition.

5. Without prejudice to the aforesaid preliminary objections I say that administrative order making a reference of industrial dispute passed by the

authority is perfectly legal, proper and justified and based on material on record and there is no illegality as alleged is committed. Therefore, the petitioner have no cause of action available to file this petition.

6. With regards to the various averments made in Para. Nos. 1 to 18 and ground Para. A to H raised in this petition, I specifically deny all the allegations/submissions/contentions of the petitioner and none of the averments/contentions raised therein shall be treated as admitted by me.

7. I say and submit that in this petition the petitioner has challenged the order of reference made by Assistant Commissioner of Labour in which he has referred the individual dispute of the respondents for reinstatement in service with back wages. The petitioner has no reason or cause of action of file this petition as all the points questioning the said reference can be raised and agitated before the Labour Court and hence the petitioner has got alternative efficacious remedy to justify and substantiate their contentions before the Labour Court therefore this petition is not at all maintainable.

8. I further say and submit that the action of retrenchment by way of so called voluntary separation scheme amounts to illegal retrenchment and illegal closer (sic closure) therefore the said VVS is contrary to the provisions of Section 25-M and O of I.D. Act as the applicabilities of chapter VB of the said Act is admitted position. Such VSS cannot be allowed to operate contrary to the Law of Land. The petitioner employer cannot violate or by pass the mandatory provisions of Law under the guise of so called settlement with so called Union or even in the name of voluntary scheme.

I say that Hon"ble Bombay High Court in a case of Voltas Limited (Motor Plant) Vs. Voltas Motor Plant Employees Union and Another, categorically held that the VSS scheme intends to allow all the employees to leave amounts to illegally closing down and retrenchment under the provision of I.D. Act and such VSS cannot be allowed to operate as it is by passing the mandatory provisions of Law relating to the closer (sic closure) and retrenchment which is against the public policy too. I therefore say and submit hat now the question of validity and legality of such settlement and consequent action are an identical question before the Labour Court and Labour Court has to adjudicate all this issue under reference therefore at this stage, no petition questioning such validity (sic validly) made reference can be entertained.

The Labour Court has got ample power and jurisdiction to deal and decide such disputed questions of facts and law.

9. I further say and submit that the order making a reference for adjudication is purely an administrative order and not a judicial or quasi judicial order therefore such an order cannot be questioned by filing a petition under Article 226 of Constitution of India.

The powers conferred upon the appropriate Govt. or concern authority u/s 10(1)

is even empowered it not only to refer an industrial dispute already existed but also to refer an apprehended dispute for adjudication. Thus looking to this order of reference made by the appropriate Govt. is within its power and authority and as such no error of law as well as of the facts are committed by the concerned authority in passing the impugned order.

10. I further say and submit that the Assistant Commissioner of Labour has made the impugned order of reference because I along with my Union filed a S.C.A. No. 4559/2003 and this Hon"ble High Court is pleased to pass an order directing the Labour Department State of Gujarat for taking action for illegal closure, termination of the services of employee. Annexure-R-T is a copy of said petition annexed herewith.

6. The Learned AGP Mr. A.L. Sharma appearing on behalf of respondent No. 2- Assistant Commissioner of Labour, Bharuch submitted that when industrial dispute raised by respondent-workman u/s 2(A) of I.D. Act, 1947 before Assistant Commissioner of Labour, Bharuch, at that occasion present petitioner has not raised any contention before Assistant Commissioner of Labour, Bharuch. He vehemently submitted that no such averment made in present petition by petitioner that whether particular stand was taken by petitioner before Assistant Commissioner of Labour, Bharuch or not. He also submitted that when petitioner remained silent and not objected to dispute raised by workman against termination and then, to challenge order passed by Assistant Commissioner of Labour, Bharuch raising new plea for first time before this Court which was not raised before Assistant Commissioner of Labour, Bharuch and therefore, only on that ground this petition is required to be dismissed by this Court. He also submitted that such contentions which raised for first time cannot be entertained by this Court.

7. I have considered submissions made by learned Advocates appearing on behalf of respective parties and also perused order in question passed by Assistant Commissioner of Labour, Bharuch.

8. Learned Advocate Mr. Mansuri has relied upon recent decision of Division Bench of this Court in case of Thakore Nagjibhai Bhailal v. JPCL, Now Amalgamated with Reliance Inds. Ltd. and Others (2011) I CLR 183 : 2011-II-LLJ-182, where, according to him, an identical question/dispute raised by workman against voluntary separation scheme which was initially not referred for adjudication by Assistant Commissioner of Labour, Baroda and thereafter, petition was preferred by workman before this Court which came to be dismissed by learned single Judge of this Court and ultimately, that decision of learned single Judge was challenged before appellate forum in L.P.A. No. 418/2009 which came to be allowed by Division Bench of this Court while setting aside order of learned single Judge and directed to Assistant Commissioner of Labour, Baroda to refer the matter for adjudication by order dated August 23, 2010.

9. The industrial dispute raised by workman u/s 2-A of I.D. Act, 1947. For that

detailed procedure u/s 12 of I.D. Act, 1947 does not require to be followed because it is an individual dispute treated as industrial dispute by legal fiction as it is espoused by Union being an industrial dispute covered by definition u/s 2(k) of I.D. Act, 1947. The decision which has been relied upon by learned Advocate Mr. Thakker of Apex Court in case of Secretary, Indian Tea Association v. Ajit Kumar Barat and Another (supra) is not applicable to facts of present case because no such contention was raised by petitioner before Assistant Commissioner of Labour, Bharuch at the time when industrial dispute was raised by respondent-workman. The petitioner has not produced any materials for consideration by Assistant Commissioner of Labour, Bharuch to have prima facie view. Therefore, that decision is not applicable to facts of present case.

10. So far as decision of Apex Court in case of A.K. Bindal and Another v. Union of India and Others (supra), particularly Para. 14, relied upon by Mr. Thakker, which was given on merits. Therefore, that question is not required to be examined by this Court at this stage because this Court is only examining fact, whether industrial dispute which has been referred for adjudication, at that occasion whether industrial dispute was in existence or not. If industrial dispute exists, then it must have to be referred for adjudication and Assistant Commissioner of Labour, Bharuch has no jurisdiction to decide it on merits. Therefore, this decision is also not helpful to learned Advocate Mr. Thakker because observations made in Para. 34 is on merits.

11. The decision of Assistant Commissioner of Labour, Bharuch and Conciliation Officer dated June 30, 2004 in IDR Case Nos. 27 to 54/2004 is not binding to this Court and that cannot be considered as a precedent. However, apparently Assistant Commissioner of Labour, Bharuch has examined merits for which he has got no jurisdiction. Therefore, this decision of Assistant Commissioner of Labour, Bharuch dated June 30, 2004 is not helpful to learned Advocate Mr. Thakker.

12. The decision of Kerala High Court in case of Everestee v. District Labour Officer (supra) which has also been relied upon by learned Advocate Mr. Thakker is also based on merits and in that judgment, Kerala High Court has considered a question on merits whether a person who has tendered his resignation pursuant to voluntary retirement scheme offered by Management is not considered to be a workman within meaning of Section 2(s) of I.D. Act, 1947.

12.1 The aforesaid decision of Kerala High Court is also not applicable to facts of present case because no such contention raised by petitioner before Assistant Commissioner of Labour, Bharuch that respondents-workmen are not covered by definition of "workman" u/s 2(s) of I.D. Act, 1947.

13. It is necessary to note that order which has been passed by Assistant Commissioner of Labour, Bharuch which is under challenge in present petition is being an administrative order and even not quasi judicial order and not deciding the rights of either parties. Therefore, in such cases, no challenge is permissible

under law unless on being admitted facts between parties if employer is able to show to this Court from order of reference itself that industrial dispute was not existed on the date on which it was raised by workman as per decision of Apex Court in case of ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, . Relevant Para 13 is quoted as under at pp. 276 and 277 of LLJ:

13. Mr. Bhat, learned counsel for the second respondent, has submitted that this Court should not interfere with the order of the Central Government making a reference u/s 10 of the Act, as the appellant can ventilate its grievances before the Industrial Tribunal itself and if the decision of the Tribunal goes against the appellant, the same may be challenged in accordance with law. According to learned counsel the writ petition is pre-mature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference u/s 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised.

14. Recently, Division Bench of this Court, decided the case of Thakor Nagjibhai Bhailal v. IPCL, Now Amalgamated with Reliance Inds. Ltd. and Others (supra). Relevant observations of aforesaid decisions are in Para. 20 to 26 are quoted as under Thakor Nagjibhai Bhailal and Others Vs. IPCL now Amalgamated with Reliance Ind. Ltd. and Others, at pp. 188-190:

20. In the case of Sarva Shramik Sangh v. Indian Oil Corporation Ltd. (supra), the Supreme Court observed as follows:

29. It is true that making a reference u/s 10(1) of the ID Act is within the discretion of the appropriate Government. Referring to the unamended Section 10(1) of the ID Act this Court in State of Madras Vs. C.P. Sarathy and Another, laid down the following principles:

(i) The Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an "industrial dispute" exists or is "apprehended".

(ii) The factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the Government to decide.

(iii) The order making a reference is an administrative act and it is not a judicial or a quasi-judicial act.

(iv) The order of reference passed by the Government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution, to see if the Government had material before it to support the conclusion that the dispute existed or was apprehended.

In *Rohtas Industries Vs. S.D. Agarwal and Others*, , the Supreme Court held as follows:

7....This interpretation of Section 10(1) is based on the language of that provision as well as the purpose for which the power in question was given and the effect of a reference. That decision cannot be considered as an authority for the proposition that whenever a provision of law confers certain power on an authority on its forming a certain opinion on the basis of certain facts the Courts are precluded from examining whether the relevant facts on the basis of which the opinion is said to have been formed were in fact existed.

21. Whether the Government can go into the merits of the dispute was the question raised before the Supreme Court in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, . Therein, at para 9, the Supreme Court observed as under at p. 262 of LLJ:

9.... 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.

22. If the appropriate Government refuses to make a reference for irrelevant considerations, on extraneous grounds or acts mala fide, a party would be entitled to move the High Court for a writ of mandamus. This was the view of the Supreme Court in *Hochtief Gammon Vs. State of Orissa and Others*, , wherein the Supreme Court made the following observations at p. 428 of LLJ:

13. The executive has to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the executive acts lawfully. It is no answer to the exercise of that power to say that the executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by Courts by failing to give reasons. If they give reasons and they are not good reasons, the Court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the executive considers it inexpedient to exercise their powers they should state their reasons and there

must be material to show that they have considered all the relevant facts.

23. Section 10(1) of the I.D. Act confers a discretionary power and is exercised on being satisfied that an industrial dispute exists or is apprehended. There may be some material before the Government on the basis of which it forms an opinion. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party, it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. Such was the finding of the Supreme Court in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, .

In the very same case, however, the Supreme Court held that "....merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist..... The industrial dispute may nonetheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so u/s 10(1), nor is it precluded from making the reference on the only ground that on an earlier occasion it had declined to make the reference."

24. In *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, , the Supreme Court considered a refusal by the Government which has decided on merit. That was the case where the services of the employee were terminated after charges against him were proved in a domestic enquiry. In the said case, the Supreme Court observed as follows at p. 191 of LLJ:

....The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appeal that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or

not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus.....It is equally well settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision.

25. In *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, , the Supreme Court held as under:

.... While exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function. In performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. However, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. But the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

.....

Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1). When the dispute was whether the convoy drivers were employees or workmen of TELCO, that is to say, whether there was relationship of employer and employees between TELCO and the convoy drivers, the Deputy Labour Commissioner and/or the State Government was not justified in holding that the convoy drivers were not workmen and accordingly, no reference could be made.

When it is found that the dispute should be adjudicated by the Industrial Tribunal and the State Government had persistently declined to make a reference u/s 10(1) despite chances given by the High Court and Supreme Court to reconsider the matter, the Court would direct the Government to make a reference of the dispute to the appropriate Industrial Tribunal.

26. When similar matter fell for consideration before the Supreme Court in *Sharad Kumar Vs. Govt. of NCT of Delhi and Others*, , the Supreme Court observed that where determination of the question required examination of factual matters for which materials including oral evidence will have to be considered, in such matters, the State Government could not arrogate on to itself the power to adjudicate on the question.

15. Learned Advocate Mr. Mansuri appearing for respondent No. 1 on behalf 4 workmen submitted that whatever contentions raised by learned Advocate Mr. Thakker before this Court, challenging order of reference that all contentions can be raised by petitioner before Labour Court where dispute is referred for adjudication. But this Court cannot decide disputed question of fact in writ petition. He submitted that petitioner having opportunity to raise all contentions before Labour Court about tendering resignation and accepting amounts by workmen and if Labour Court is satisfied then Labour Court can reject reference, therefore merely reference is made, it does not amount that it must be allowed by Labour Court. The Labour Court has to adjudicate reference on merits. The petitioner having scope to raise all contentions before Labour Court. He submitted that in identical case of United Phosphorus Ltd. v. Commissioner of Labour 2010 II CLR 1045, recently this Court has considered same question examining challenge by company against order of reference. The relevant observations of aforesaid decision are in Para 9 to 15 are quoted as under :

9. I have considered both affidavits filed by petitioner; one is rejoinder and another is affidavit of Mr. P.R. Mehta. The question is that in such circumstances, against the challenge which has been made by petitioner Company, the order of reference made by appropriate Government u/s 12(5) of I.D. Act, 1947 dated May 31, 2008, whether petition can be entertained by this Court while exercising power under Article 226 of the Constitution of India or not. This question is to be examined by this Court in light of the factual background as narrated by this Court hereinabove. The law on this-subject has been made clear by Apex Court that disputed question of facts cannot be examined by this Court in petition under Article 226 of the Constitution of India. In this case, dispute itself is apparently from bulky record produced by petitioner company is found. The settlement dated March 17, 2008 with other Unions, according to petitioner company, has been accepted by almost all workmen, even though during the pendency of Conciliation Case No. 15/2007 before the Conciliation Officer, Bharuch, copy of this settlement is not produced by petitioner company before Conciliation Officer. The settlement has been challenged by respondent No. 3 Union on the ground that signature of concerned workmen has been obtained by adopting pressurized tactics as per affidavit of appropriate Government. The genuineness of the settlement itself is under challenge and petitioner company has challenged order of reference dated May 31, 2008 based on very settlement dated March 17, 2008 which settlement has been challenged or disputed by respondent No. 3 Union on the ground that signature of concerned workmen has been obtained by adopting pressurized tactics.

9.1 In light of this apparent dispute between petitioner company and respondent No. 3 Union as well as other Union i.e. Rasaynik Karmachari Sangh (Bharti Mazdoor Sangh). Therefore, such disputed facts whether settlement dated March 17, 2008 is valid, just and proper or not and dispute raised by respondent No. 3 Union is genuine or not and whether respondent No. 3 Union is entitled to raise such dispute after terminating the settlement award by notice dated October 30,

2006 and on January 16, 2007, fresh dispute charter of demand raised by respondent No. 3 Union. Therefore, these are the questions and disputed facts raised before this Court while challenging order of reference made by appropriate Government dated May 31, 2008, this Court cannot entertain said petition for resolving disputed facts and petitioner company is having a remedy to raise all kinds of contentions which are raised before this Court, before Industrial Tribunal, Baroda where reference is made being Reference No. 63/2008. Therefore, considering this being a disputed question of facts between both parties -petitioner company and respondent No. 3 Union, in such circumstances challenge to order of reference made by appropriate Government, such petition cannot be entertained and maintainable because right of petitioner company is not adversely affected by the action or order of State authority and petitioner company is entitled to raise all kinds of contentions which are raised before this Court and this Court cannot examine disputed questions of facts having several cause of action, then petitioner can pursue the remedies before the Industrial Tribunal, Baroda and therefore, this petition is not maintainable. That view has been taken by this Court in the case of; Apollo Tyres Limited Vs. Commission of Labour and Another, . Relevant discussions of aforesaid decisions are in Para. 4 to 10 which are quoted as under:

4. I have considered the submissions made by the learned Advocate Mr. K.C. Raval before this Court. Considering the submission of learned Advocate Mr. Raval that the order of reference is bad, learned Advocate Mr. Raval has not been able to point out as to which right of the company is violated by respondent No. 1 by making an order of reference. Unless and until it is successfully demonstrated by the party-challenging an order of reference that it is violative of any right of the petitioner, such party cannot be permitted to challenge the order of reference only on the ground that the reference is bad. Even if it is believed that the order of reference is bad, then also, that would, ipso-facto, not entitle such party to challenge the same before the higher forum. So long as the right of the petitioner company not adversely affected by the" respondent No. 1 while passing the order of reference, this Court cannot entertain the petition only on that ground. Writ petition is maintainable only when right of the parties are adversely affected by the action or order of the State Authority. Learned Advocate Mr. Raval has not been able to point out before this Court that because of the order of reference made by respondent No. 1, any right of the petitioner has been adversely affected. Therefore, on this count, writ petition is not maintainable. Apart from that, whatever contentions raised by the petitioner in this petition before this Court can be raised by the petitioner even before the Industrial Tribunal as well while participating in the reference proceedings and the petitioner can participate in the reference proceedings without prejudice to his rights and contentions to challenge the order of reference if the ultimate orders of the Tribunal are adverse to the petitioner, then same can be challenged therefore, on that ground also, writ petition challenging order of reference is not maintainable. Therefore, according to my opinion, petitioner is having alternative

effective remedy to raise all these contentions before the Industrial Tribunal and the Tribunal is competent enough to adjudicate or decide it on the basis of the record which can be produced by the respective parties before the Tribunal. So, the petitioner is having alternative equally efficacious remedy to raise all these contentions before the Industrial Tribunal and therefore also this petition is not maintainable because petitioner has not been able to point out that any right of the petitioner has been adversely affected by order of reference.

5. Further, whether the union is representing substantial number of workmen or not; whether the individual dispute u/s 2-A is to be converted into a dispute u/s 2-K or not; in respect of the settlement, whether that settlement has been accepted by each workman or not and whether the union which has raised dispute is entitled to raise the dispute in respect of suspended employees or not and whether all these contentions raised by the petitioner in this petition for challenging order of reference were raised by the petitioner in conciliation proceedings or not, all these are the disputed questions of fact which cannot be appropriately dealt with and decided by this Court in a petition under Article 226 of the Constitution of India. There is nothing on record to show that the petitioner has raised any of such contentions before the conciliation officer. All these are the disputed questions of fact requiring appreciation of evidence and the petitioner is having ample opportunity to raise preliminary contention before the Industrial Tribunal in respect of whatever contention raised before this Court and the Industrial Tribunal can, on the basis of the evidence and record produced by the parties, examine the same but this Court cannot examine all these disputed questions of fact in a petition under Article 226 of the Constitution of India.

6. In Philips India Limited and Another Vs. P.N. Thorat, Asst. Commr. of Labour and Conciliation Officer and Others, , order of reference was challenged by the employer before the Division Bench of Bombay High Court. Workmen were contending fraud committed by employer in implementing settlement for Voluntary Retirement Scheme. It was held that the dispute involved triable issues requiring evidence to be led and, therefore, employer's challenge was held to be not-sustainable. Relevant observations made by the Division Bench of the Bombay High Court in the said decision in para 12 are reproduced as under:

12. From the above, what emerges is that there are serious triable issues. The contention of the Union and the workmen is that fraud has been practiced upon them. If the workmen are able to succeed in proving that the agreement was entered into by playing fraud, it will be open for them to avoid the settlement. This issue cannot be answered by this Court at this stage as it would require evidence to be led. Prima, facie a Division Bench of this Court in the very proceedings has taken note that the employees involved in both the writ petitions would be workmen. The Apex Court, however, left that question to be; decided. At any rate the expression workmen considering Section 2(s) of the I.D. Act would include ex-workmen. That contention of the management that they are

not workmen would require adjudication of facts. Based on these findings and the issue of pensionary benefits under VRS it will have to be considered whether the dispute partakes of an industrial dispute. This again would be premature for this Court to decide at this stage and it will be open to the petitioners to raise all issues before the Industrial Tribunal to which the reference is made. Similarly the contention of the employer that they have complied with the terms of the settlement and consequently there is no industrial dispute and that the employees cease to be workmen will have to be adjudicated upon by the Tribunal.

7. Similar question has been examined by the Division Bench of Delhi High Court in *DD Gears v. Secretary (Labour) and Others* (2006) Lab. IC 1462 wherein reference of an industrial dispute to the Industrial Tribunal was challenged. It was held that no writ petition should be entertained against a mere reference as not affecting rights of the parties. It was held in para 19, 20, 21 and 22 of the said judgment as under:

19. The learned single Judge rejected the Writ petition and hence this appeal.

20. In our opinion, we cannot interfere with the reference order u/s 10(1) of the Industrial Disputes Act because that order does not affect the rights of the parties. Hence the Writ petition against that order is liable to be dismissed.

21. It is well settled that a writ petition lies only when the rights of some party has been adversely affected. A mere reference u/s 10(1) of the Industrial Disputes Act does not effect any one, rights and hence no writ petition should ordinarily be entertained against a mere reference u/s 10(1), as such a petition is premature.

22. It is only when an award is given by the Labour Court or Tribunal that a writ petition should be entertained.

8. In the instant case also, mere reference has been made by respondent No. 1 and petitioner is unable to point out how it is adversely affecting the rights of the company. Petition is also involving disputed questions of fact which cannot be appropriately dealt with and decided in a writ petition under Article 226 of the Constitution of India. Therefore, in view of the aforesaid two decisions, petition is not sustainable in law.

9. In *Sanjay Sitaram Khemka Vs. State of Maharashtra and Others*, , maintainability of petition involving questions of fact was considered by the apex Court. It was held that the matter involving disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial, review. Relevant observations made in para 8 and 9 of the judgment by the apex Court are reproduced as under:

8. Having regard to the allegations and counter allegations made by the parties before us, we are of the opinion that no relief can be granted to the petitioner in this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The petitioner has several causes of action

wherefor he is required to pursue specific remedies provided therefor in law.

9. A writ petition, as has rightly been pointed out by the High Court, for grant of said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of controversy, as also the disputed questions of fact, go into the merit of the matter; evidently no relief can be granted to the petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution. (See *The Management of Tractor's and Farms Equipment's Ltd. Vs. The Presiding Officer, Labour Court, B. Arokiaraja and P. Kannuchamy*,

10. Therefore, in view of the above observations made by the Supreme Court, Bombay High Court, as well as the Delhi High Court as referred to above, and also considering the facts of the present case which involves disputed questions of fact and also considering the fact that the petitioner is not able to contend that the order of reference is adversely affecting its right, according to my opinion petition is not maintainable against order of mere reference made by respondent No. 1 as petitioner is having specific remedy before the Industrial Tribunal to raise all the contentions raised in this petition before the Tribunal because the questions raised in this petition are such which would require evidence to be led and appreciation thereof. According to my opinion, petitioner herein is having several causes of action for which petitioner is required to pursue specific remedy before the Tribunal and this Court cannot decide such disputed questions of fact in exercise of the powers under Article 226 of the Constitution of India. It is more so when the petitioner is not alleging any mala fides against respondent No. 1. Further, it is not the case of the petitioner that the Industrial Tribunal is not having power to examine the preliminary contention which may be raised by the petitioner in respect of the contentions raised by the petitioner in this petition before this Court, meaning thereby, Tribunal is having powers u/s 10(1) and 10(4) of the I.D. Act, 1947, so, Tribunal is competent to decide all the contentions that may be raised by the petitioner before it including the preliminary contention as well and can participate in the reference proceedings without prejudice to its rights and contentions in respect of the preliminary contention and if the ultimate outcome is adverse to the petitioner, then, petitioner can challenge the same on all grounds available to him including the contentions raised by petitioner before this Court against the order of reference. In view of that also, this petition is not maintainable in law.

10. Similar view has been taken by the Division Bench (Coram : Markandeya Katju, C.J. and Madan B. Lokur, J.) of Delhi High Court in the case of *D.D. Gears Ltd. v. Secretary (Labour) and Others* 2006 IV LLJ (Suppl) 387 (Del). Relevant observations of aforesaid decisions are in Para 20 to 22 which are quoted as under;

20. In our opinion, we cannot interfere with the reference with the reference order u/s 10(1) of the I.D. Act, 1947 because that order does not affect the rights of the parties. Hence the writ petition against that order is liable to be dismissed.

21. It is well settled that a writ petition lies only when the rights of some party has been adversely affected. A mere reference u/s 10(1) of the I.D. Act, 1947 does not affect (sic) anyone, rights, and hence no writ petition should ordinarily be entertained against a mere reference u/s 10(1), as such a petition is premature.

22. It is only when an award is given by the Labour Court or Tribunal that a writ petition should be entertained.

11. This Court (Coram : K.A. Puj, J.) had an occasion to decide identical question where order of reference made by appropriate Government has been challenged in the case of Indian Institute of Management v. Gujarat Mazdoor Sabha and Others 2006 IV LLJ (Suppl) 554. In this matter, on behalf of IIM, learned senior Advocate Mr. K.S. Nanavati had appeared and raised almost all kinds of contentions which are raised before this Court and also relied upon judgment of Apex Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, . On behalf of other side, Mr. Mukul Sinha had appeared and he also relied upon decisions which are almost relied by Mr. Mansuri appearing on behalf of respondent No. 3 Union in present case. After considering submissions made by both learned Advocates at length, the finding has been given by this Court in Para 26 which is quoted as under:

26. After having heard the learned Advocates for the parties and after having gone through the pleadings of the parties made before the Assistant Labour Commissioner and after having carefully considered the contentions raised in the present petition as well as the authorities cited before the Court, the Court is of the view that the impugned order passed by the Assistant Labour Commissioner, Ahmedabad does not call for any interference of this Court while exercising its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. While making the reference, the Assistant Labour Commissioner has observed that the industrial dispute pertaining to the matters regarding 16 lady workers is required to be referred to the Labour Court while exercising his powers vested in him u/s 10(1)(c) of the Industrial Disputes Act and the dispute was as to whether these 16 ladies should be reinstated in service in their original posts with full back wages for the intervening period. During the course of conciliation proceedings, the petitioner has filed its reply and counter reply was filed on behalf of the Union. The plain reading of the reply as well as counter reply makes it clear that the petitioner has raised the dispute as to whether these 16 ladies are the employees of the petitioner or whether the petitioner is an "Industry". The Union has filed its counter reply, wherein it is stated that these 16 ladies were the employees of the petitioner. The Assistant Labour Commissioner is not competent to decide as to whether these 16 ladies are the

employees of the petitioner. It requires adjudication and proper forum for adjudication is either the Industrial Tribunal or Labour Court. The Assistant Labour Commissioner has to merely discharge his function as an administrative officer. He has to record prima facie subjective satisfaction and after having come to this subjective satisfaction, he has to refer the dispute to the Labour Court or to the Industrial Tribunal. Whether particular person is an employee of the institute or not, requires leading of evidence oral as well as documentary. This could be done only at the level of either the Labour Court or Industrial Tribunal where both the parties do get the opportunity of leading their evidence. It is held by the Courts on number of occasions, that the proceedings should not be terminated prematurely. If the reference is rejected, the Conciliation Officer has to record the reasons for that u/s 12(5) of the Act. However, while making the reference, it is not necessary to record any reason. Merely because the reasons are not recorded while making the reference, it cannot be said that the order is without application of mind. It is also important to note here that before the Assistant Labour Commissioner, the award passed by the Industrial Tribunal in the case of NID was pointed out wherein on similar situation, the Industrial Tribunal has come to the conclusion that those 31 ladies were the employees of National Institute of Design. It was also pointed out that the petition was pending before this Court being Special Civil Application No. 8549/1988. The Court has also considered the relevant observations made by the Hon'ble Supreme Court in the decision of State of Madras v. C.P. Sarathy (supra) wherein, in no uncertain terms, the Supreme Court has observed that if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash and set aside the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion. The Court has also considered the binding judgment of the Supreme Court and observations made therein which are squarely applicable to the facts of the present case. The determination of the questions or issues which are raised in this petition requires examination of factual matters and for that purpose, all relevant materials including oral as well as documentary evidence will have to be led before the Labour Court and same are required to be considered. If this is the situation then in that case, the Government could not arrogate unto itself the power to adjudicate on the question and hold that 16 ladies were not the workmen within the meaning of Section 2(s) of the Act and terminate the proceedings prematurely. This issue will have to be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Simply because the dispute is raised before this Court regarding employer-employee relationship or whether the petitioner is an "industry" or not, the order making reference passed by the Assistant Labour Commissioner cannot be quashed and set aside.

12. Recently, the Apex Court has examined aforesaid aspect in the case of S.B. Minerals Vs. MSPL Limited, . Relevant observations are quoted as under:

1. The respondent filed a suit for declaration and injunction against the petitioner. The suit was decreed. The petitioner filed an appeal and the first appellate Court allowed the appeal and dismissed the suit. Feeling aggrieved, the respondent filed a regular second appeal u/s 100 of the CPC (for short "CPC"). By order dated October 8, 2009, the High Court admitted the appeal formulating three substantial questions of law. In view of the urgency expressed, the High Court directed that the appeal be set down for final hearing in November, 2009.

2. The respondent has sought leave to file an appeal against the "order" of admission of the second appeal. The petitioner contends that the case did not involve any substantial question of law and the second appeal ought not to have been admitted.

3. Sub-section (5) of Section 100 CPC provides that a second appeal shall be heard on the substantial questions of law formulated by the Court. It also provides that the respondent, at the hearing of the second appeal, can argue that the case does not involve such questions. Thus the substantial questions of law formulated by the High Court are not final, and it is open to the petitioner herein (who is the respondent in the pending appeal) to demonstrate during hearing that no substantial question of law arose for consideration in the case and that the second appeal should be dismissed.

4. An order admitting a second appeal is neither a final order nor an interlocutory/ interim order. It does not amount to a judgment, decree, determination, sentence or even "order" in the traditional sense. It does not decide any issue but merely entertains an appeal for hearing.

5. The scope of Article 136 is no doubt very wide. Special leave to appeal can be granted under Article 136 against any judgment, decree, determination, sentence or order passed or made by any Court or Tribunal, in any case or matter. There are no limitations upon the discretionary power of this Court under Article 136, except those which are self-imposed. One recognised area where the discretion is not exercised is where the remedy by way of an appeal or revision is available against the order. Another recognised area is where the subject matter is stale or frivolous or cantankerous or where the stakes or issue involved is so small and negligible, that grant of leave or even issue of notice will cast a heavy burden in terms of expense, time and energy on a poor or ordinary respondent.

6. There is a third recognised area of exclusion relating to orders which do not decide any issue. Orders admitting a petition/appeal/revision, or orders issuing notice to show cause why a petition/ appeal/revision should not be entertained, or an order merely adjourning a case, fall under this category. Extraordinary situations leading to irreversible injustice can of course be exceptions to the exclusion. This case falls under the third category of exclusion, but does not fall under the exception to the exclusion.

7. It is a matter of concern that there is a noticeable increase in the number of special leave petitions against such "non-orders" referred to as orders.

8. The SLP is dismissed.

13. Recently, the Madras High Court has examined aforesaid aspect in the case of Pradeep Stainless India Pvt. Ltd. v. Joint Commissioner of Labour and Another in W.P. No. 3094/2010, decided on February 18, 2010. Relevant observations are in Para 30 to 40 are quoted as under:

30. In fact, the power of the conciliation officer as well the State Government to refer a dispute is more of an administrative character and it is not a quasi judicial power. A Constitution Bench of the Supreme Court as early as in the year 1953 in its judgment in State of Madras Vs. C.P. Sarathy and Another, paragraph 16 observed as follows:

16. This is, however, not to say that the Government will be justified in making a reference u/s 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. 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. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

31. The Supreme Court subsequently in its judgment in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, held in paragraph 6 as follows:

6. Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the Section for adjudication. The opinion which the

appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace, and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of 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 the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters (see *State of Madras Vs. C.P. Sarathy and Another*, .

32. A division bench of the Patna High Court in *Mohini Sugar Mills v. State of Bihar* 1967 II LLJ-209 (Pat) opined that if the Government makes a reference under S.10 by including in it several items in dispute between the employer and the employees, and if the Tribunal concerned holds that, in respect of some items in dispute, the order of reference is incompetent, the Tribunal itself must refuse to give any decision on those points and confine its Award only to those disputes in respect of which a valid reference is made and it has jurisdiction to adjudicate on the same. This opinion of the division bench of the Patna High Court was quoted with approval by a division bench of this Court in *Ramakrishna Mills Ltd. (supra)* Case.

33. It will not be out of place to mention that even in case of a reference u/s 10(1), principles of natural justice will not be attracted. Even if demands of the workmen are altered or reconsidered by the State Government, such attacks based on principles of natural justice cannot be pressed into service. This was held so by a Full Bench of this Court in *G. Muthukrishnan v. Administrative Manager* 1980 I LLJ 215. The idea being on a reference the matter will be heard by a judicial forum like the Tribunal/Labour Court.

34. The Supreme Court vide its decision in *Bharat Heavy Electricals Ltd. v. Anil* (2007) 1 SCC 610 : 2007 I LLJ 619, speaking for the Bench through S.H. Kapadia, J. had observed as follows:

18..... There is a difference between an individual dispute which is deemed to be an industrial dispute u/s 2-A of the said 1947 Act on the one hand and an industrial dispute espoused by the union in terms of Section 2(k) of the said 1947 Act. An individual dispute which is deemed to be an industrial dispute u/s 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute u/s 2(k) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In *Radhey Shyam and Another Vs. State of Haryana and Another*, it has been held after considering various Judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 (which is similar to Section 2(1) of the said 1947 Act). Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc.

35. The Supreme Court vide its judgment in *ANZ Grindlays Bank Ltd. v. Union of India* (supra) held in paragraph 14 as follows:

14. Mr. Bhat, learned counsel for the second respondent, has submitted that this Court should not interfere with the order of the Central Government making a reference u/s 10 of the Act, as the appellant can ventilate its grievances before the Industrial Tribunal itself and if the decision of the Tribunal goes against the appellant, the same may be challenged in accordance with law. According to learned counsel the writ petition is premature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference u/s 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue

raised.

(Emphasis added)

The stage to scrutinise an order of reference will come only if the Government takes a decision u/s 10(1) of the I.D. Act. But the above decision cannot be extended to deal with the parleys held by a Statutory Conciliation Officer.

36. Finally, it will not be out of place to state that the Supreme Court in D.P. Maheshwari Vs. Delhi Administration and Others, forewarned the High Courts from entering into the arena of deciding preliminary issues and then making the entire machinery in the industrial dispute derailed at the instance of the employers. In paragraph 1 of the said judgment, the Supreme Court had observed as follows:

1. It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise

all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

(Emphasis added)

37. The Supreme Court in the very same judgment gave a note of caution which is as follows:

7. We are clearly of the opinion that the High Court was totally unjustified in interfering with the order of the Labour Court under Article 226 of the Constitution.....

38. The Industrial Disputes Act is the only machinery provided for the workmen to have their grievance settled either by conciliation or by adjudication. There is no other third option open to the workmen. If attempt made by the management to thwart the proceedings by seeking a writ of prohibition, the very machinery will be jeopardized and the workmen will lose faith in the machinery created for the purpose of resolving the grievances of the workmen.

39. It will not be out of place to refer to a recent judgment of the Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, in Civil Appeal No. 587/2010 (Arising out of S.L.P.(C) No. 6966/2009), dated January 5, 2010, wherein G.S. Singhvi, J. had observed as follows:

23.....it need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employers public or private.

40. A.K. Ganguly J., in his concurring opinion had observed as follows:

46. At this critical juncture the judges' duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalization.

41. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

14. In view of aforesaid decisions of this Court, Madras High Court, Delhi High Court as well as Hon'ble the Apex Court and also considering the facts of present case where dispute between both parties are apparently found from the record itself because according to petitioner company, settlement dated March 17, 2008 is legal and valid settlement. Against that, Mr. Mansuri has challenged genuineness and validity of such settlement which is not binding to respondent

No. 3 Union and its members and said settlement where signature has been obtained by adopting pressurized tactics as per affidavit filed by State authority, appropriate Government and while referring the dispute by appropriate Government, no, legal right or fundamental right of petitioner company has been adversely affected. It is merely order of reference of industrial dispute for adjudication. Therefore, this Court cannot examine such disputed facts between the parties while exercising powers under Article 226 of the Constitution of India and petitioner company is having alternative, effective efficacy remedy to raise all these contentions before Industrial Tribunal, Baroda where Reference No. 63/2008 which has been referred for adjudication by appropriate Government and get adjudicated the contentions which are to be raised by petitioner company that settlement dated March 17, 2008 is legal and valid. Therefore, on these grounds, according to my opinion, the petition filed by petitioner company is not required to be entertained by this Court. Otherwise also, it is not maintainable in law. Therefore, contentions raised by learned Advocate Mr. Gandhi cannot be accepted and hence, rejected. Therefore, there is no substance in present petition. Accordingly, present petition is hereby dismissed. Notice is discharged. Interim relief, if any, stands vacated.

15. It is necessary to note the conduct of petitioner-company to challenge order of reference made by appropriate Government dated May 31, 2008. At least about 2 years are likely to be over, the adjudication is not started before Industrial Tribunal, Baroda because of pendency of present petition and interim relief obtained by petitioner company against proceedings of Reference No. 63/2008. So petitioner company has easily got 2 years" delay by filing merely petition in this Court which amounts to misuse of legal machinery and legal proceedings and avoid industrial adjudication by way of filing said petition so that workmen may not be able to get minimum relief or adjudication of industrial dispute and therefore, such approach of petitioner company cannot be encouraged by this Court. Therefore, according to my opinion, cost is also required to be imposed upon petitioner company. Same is quantified at ` 25,000/-. Such cost is required to be deposited by petitioner company in this Registry of this Court within a period of one month from date of receiving copy of present order.

In view of aforesaid observations made by Division Bench of this Court which squarely covered issue involved in present petition. Therefore, according to my opinion, contentions raised by learned Advocate Mr. Thakker cannot be accepted and order passed by Assistant Commissioner of Labour, Bharuch referring industrial dispute against termination has been rightly referred for adjudication while exercising powers u/s 10(1)(c) of I.D. Act, 1947. For that, Assistant Commissioner of Labour, Bharuch has not committed any jurisdictional error which requires interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in present petition. Accordingly, present petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated, with a direction to Labour

Court, Bharuch to decide pending reference in respect to 4 workmen as early as possible and complete reference proceedings within a period of six months from date of receiving copy of present order.