
(1971) 08 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No. 433 of 1971

Remington Rand of India Ltd.

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 05-08-1971

Acts Referred:

Citation : (1971) ILR Delhi 723

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : R.L. Aggarwal, J.K. Mehra, D.N. Gupta, Jitendra Sharma, S.K. Mahajan and Bhupinder Singh, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner. Messrs Remington Rand of India Limited, is aggrieved by the order passed by the Industrial Tribunal, Delhi (Shri R. K. Baweja) over-ruling certain preliminary objections to the industrial dispute adjudicating a reference made by then Lieutenant Governor, Delhi, by his order dated 28th March 1970 and the further corrigendum issued on , June 1970.

(2) Messrs Remington Rand of India Limited (hereinafter referred to as the Company) has its registered office and head office at Calcutta; it has also a Regional office at Delhi at which the main business is the sale and service of typewriters and office equipment. There are three branches of the company at Chandigarh, Jaipur and Amritsar and two depots at Jammu and Simla. The branches and depots are under the over-all administrative control of the regional office, the day-to-day administration being looked after by the branch managers. The regional office is no doubt under the control of the head office at Calcutta. It is admitted vide rejoinder affidavit of the Administrative Officer. Shri P. P. Saraf) that the Delhi regional office has "overall administrative control over its branches". What was only denied was only "the complete administrative control" even in "minor day- to-day matters". There are two offices at Delhi, one is at

Asaf Ali Road and another in Parliament Street, New Delhi. It was stated by Shri Saraf in the course of his evidence that the day-to-day instructions are given by the branch manager to the employees of the branch: he gives them casual leave and short term leave. The regional office at Delhi controls branches in the matter of over-all policy as shaped by the Calcutta Head Office. The Administrative Officer of the entire region, including the three branches and the two depots, appoints employees of the branch against the sanctioned strength and issues appointment letters himself. Charge sheets to the branch employees are always issued by the regional office at Delhi and disciplinary proceedings are initiated by the regional office and punishments are imposed by him after getting the approval of the head office. The branch manager has to call for Explanations of the employees working in the region, caution them and issue warning letters to them. The pay roll is prepared at the branch level and remittances are sent from Delhi to the Branch manager, who sends them to the resident mechanics in the region (by means of draft) directly where they are posted, on the basis of the prepared payrolls bonus is also similarly paid. Earned leave is sanctioned by the regional office. There are no managers at the depots which are in charge of persons in the clerical grade. The branch manager is not competent to enhance the dearness allowance and pay scales, etc. of those working under him.

(3) In the year 1959 there was a demand for the revision of the scheme of dearness allowance by the workmen in Delhi and the dispute was referred for the adjudication by the Industrial Tribunal, Delhi, which passed an award. This was challenged before the Supreme Court which by its decision dated 26th February 1962 in *Remington Rand of India v. Its workmen* 1962-1 LI 287 revised the scheme of payment of dearness allowance what is material for the present controversy is that it fixed the maximum dearness allowance at Rs. 200 per month. This was later confirmed by a settlement between the company and the representatives of the employees' association on 14th November 1962 (copy of which is Annexure 2 to the petition). By a circular dated 19th January 1963, (vide Annexure III) the maximum dearness allowance was increased by the company of its own accord from Rs. 200 to Rs. 270 with effect from 21st January 1963. There was a subsequent dispute between the workers in the various branches and depots in the Delhi region who raised a number of demands and it was referred for adjudication by the Industrial Tribunal, Delhi (I.D. No. 197 of 1963). These demands were settled on 7th August 1964 and the Tribunal passed an award in terms of the Settlement (Annexure Iv to the writ petition), changing the structure of the dearness allowance but retaining the maximum at Rs. 270.

(4) A further dispute was raised with reference to the demand to raise the maximum dearness allowance from Rs. 270 to Rs 300. This was referred to the Industrial Tribunal, Delhi, which held by its Award (No. 32 of 1967) dated 20th January 1969, that in view of the subsistent settlement, dated 7th August 1964, between the parties the dispute could not have been raised by the Association (copy of the said Award is Annexure V to the petition). A resolution was passed by the Remington Rand Employees Association. Northern Unit, Sunlight Building,

Asaf Ali Road, New Delhi, on 30th May 1969 for removal of ceiling on dearness allowance and a copy of the said resolution was sent to the Administrative Officer of the Company at Asaf Ali Road, New Delhi, on 3rd June 1969 (copies are Annexures Vii and Vi respectively). This was further reiterated in the Association's letter to the Company at Asaf Ali Road, New Delhi, by its letter dated 2nd December 1969 (copy of which is Annexure Ii, Ex. W. 14) and resolution dated 1st December 1969 (copy Annexure Iii Ex. W-15) concerning alternative demand for adequate revision of ceiling (to the demand for removal of ceiling made on 3rd June 1969).

(5) On the basis of the said demand made on the Regional Office of the company at Asaf Ali Road, New Delhi, the Lt. Governor made a reference to the Industrial Tribunal (Shri R. K. Baweja) to adjudicate the dispute which was said to exist between the management of the company (Asaf Ali Road, New Delhi) and its workmen, as represented by the Association, Northern Unit, Asaf Ali Road, New Delhi. The terms of reference were as follows."

"Whether the workmen under the administrative control of Delhi Branch are justified in demanding adequate upward revision in respect of dearness allowance or removal of ceiling put on their maximum amount of dearness allowance paid to them and, if so, to what relief are they entitled and what directions are necessary in this respect ?"

(6) By a further letter dated 20th April 1970 the said association wrote to the Under Secretary, Labour, Delhi Administration, pointing out that in the terms of the above reference the words "Delhi Branch" had been inadvertently used in place of the words "Delhi Regional Office", there being no such unit as the "Delhi Branch" of the company at New Delhi. This was sought to be further supported by referring to the Association's statement of claim before the Conciliation Officer, where the expression "Delhi Branch" had not been used but, on the contrary, only the expression "Delhi Regional Office" had been used by the Association workers. A corrigendum was issued on 10th June 1970. reading as follows:

"NO.F. 24(37)/70-Lab. In the Lt. Governor's Order No. F 24(37)/70-Lab., dated the 28th March 1970 referring the industrial dispute between the management of Messrs Remington Rand of India Limited, Sunlight Insurance Building, Asaf Ali Road, New Delhi, and its workmen as represented by the Remington Rand Employees" Association, Northern Unit, Asaf Ali Road, New Delhi, to the Industrial Tribunal presided over by Shri R. K. Baweja, for adjudication. under the heading "TERMS Of REFERENCE" for the "DELHI BRANCH" read "Delhi Regional Office". By Order (Sd.) S. S. Sanzagiri, Under Secretary, Labour Delhi Administration, Delhi. No. F. 24(37)/70-Lab. 17136, dated the 10-6-1970."

The following contentions were raised before the Industrial Tribunal, Delhi, by the company by way of preliminary objections :

(1)The alleged dispute, as seen from the original order of reference, was

confined to the office of the company at Asaf Ali Road, New Delhi, whereas the Union had sought to bring in the employees of the company's branches at Chandigarh, Amritsar and Jaipur and depots at Simla and Jammu. The corrigendum, Therefore, had extended the scope of the original order of reference. The corrigendum itself did not disclose the reasons which prompted the Delhi Administration to issue such a corrigendum. The corrigendum was had in law. (2) The Award, dated 11th March 1969, of the Industrial Tribunal, in I.D. No. 32 of 1967, continued to be in operation and, any demand during the operation of the said award and any further reference on the basis of it were wholly incompetent, invalid, illegal and void. (3) No demand of an upward revision in respect of dearness allowance had been made on the management and no industrial dispute could, Therefore, arise in respect of it.

On the basis of the above and other objections raised by the company the Tribunal framed the following four issues:

1. Whether the Delhi Administration was not competent to issue the corrigendum dated 10th June 1970. 2. Whether a demand for the upward revision of dearness allowance was made on the management ? If not, its effect ? 3. Whether the reference is invalid and illegal for the reasons given in para 2 of the preliminary objections in the written statement ? 4. Whether the establishments outside Delhi are beyond the scope of the reference ? (Onus objected to)"

(7) Two further submissions with reference to the corrigendum were made in C.M. No. 1189-W/71, which sought leave to amend the writ petition, to include them: (a) the corrigendum had not I been issued in conformity with the provisions of Article 77 of the Constitution; (b) that the same was not in accordance with the provisions of Section 10 of the Industrial Disputes Act 1947, the conditions laid down therein not having been complied with.

(8) Rajindar Sachar J. by his order dated 14th July, 1971 permitted the petitioner to add the two grounds irrespective of the fact whether the petitioner will be ultimately allowed to urge those points or not. The Union had objected to the new grounds particularly the first, being raised for the first time in this writ petition not having urged them before the Industrial Tribunal.

(9) The first point that was argued before me on behalf of the petitioner-company is that once a reference had been made to the Industrial Tribunal by the Lt. Governor the same could not be superseded, cancelled, or even amended later on. Referring to the legal aspect of the matter Gajendragadkar J., speaking for the Supreme Court in the State of Bihar v. Ganguli (D.N.) and others 1958-2 LL 634 that "the scheme of the relevant provisions would prima facie seem to be inconsistent with any power in the appropriate Government I cancel the reference made u/s 10" and that "if the legislature had intended to confer on the appropriate Government the power to cancel an order made u/s 10(1), the legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said powers." If the

Tribunal is, however, satisfied that an industrial dispute had been amicably settled it would immediately agree to make an award in terms of the settlement between the parties-as it was done on former occasions in the present case concerning disputes between the company and its workmen. Quite apart from the provisions of the Act, even on general principles his Lordship found it rather difficult to accept the argument that the Government should have an implied power to cancel its own order made u/s 10 of the Act. The Government also could not rely on section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order in respect of the specific provision. namely, section 10 of the Industrial Disputes Act. Referring to the decision of a Division Bench of the Madras High Court in *South India Estate Labour Relations Organization v. State of Madras and others* 1954-2 LI 198 his Lordship pointed out that they were not concerned in the case before them of the exercise of power of the Government to amend, or add to, a reference made u/s 10 of the Act. Particular care was taken to point out that the decision of the Supreme Court was confined to the narrow question whether any order of reference made by the appropriate Government u/s 10 can be subsequently cancelled or superseded by it.

(10) It may be noticed that in the Madras case the Government had purported to amend the reference. It was pointed out by the Division Bench that since it would be open to the Government to make an independent reference concerning any matter not covered by the previous reference there could be no valid objection when the Government resorted to an amendment of the existing reference; the objection to the same being done by the Government, it was pointed out, was a mere technicality-of form without substance-not meriting interference in the exercise of writ jurisdiction.

(11) My attention has been drawn by Shri Jitender Sharma, learned counsel for the Union, to a later decision of the Supreme Court in *Dabur (Dr.) S. K. Burman (Private) Ltd. Deoghar v. Their Workmen* 1967 2 LJ 863 . The industrial" dispute in that case had been referred to the Labour Court Patna in the first instance by the Government of Bihar which later issued a corrigendum substituting "Ranchi" for "Patna", the effect of which, was that instead of the reference, being to the Labour Court Patna it was to the Labour Court, Ranchi. Dealing with the objection that the Government, having once made a reference to the Labour Court, Patna, was not competent to cancel or withdraw that reference and make a competent reference of the same dispute to the Labour Court, Ranchi, Bhargava J" speaking for the Supreme Court agreed with the High Court of Patna, in holding that a mere clerical error had been corrected. His Lordship observed as follows :

"We cannot see how any objection can be taken to the competence of the State Government to make a correction of a mere clerical error. The finding that it was a clerical error means that the Government in fact intended to make the reference to the Labour Court, Ranchi; but, while actually scribing the order of reference, a mistake was committed by the writer of putting down Patna instead

of Ranchi. Such a clerical error can always be corrected and such a correction does not amount either to the withdrawal of the reference from, or cancellation of the reference to, the Labour Court, Patna."

In yet another decision of the Madras High Court in *Thumb: Motor Service, Salem v. Labour Court, Coimbatore* and another 1960 LLJ 563 the original order of reference had proceeded on the basis that the retrenchment of workers in question was justified, whereas it was negated by the second order of reference. It was consequently held to fall within the dictum of the Supreme Court in *Ganguli's* case. It was, however, pointed out that if the first matter referred for adjudication did touch any dispute relating to retrenchment, the addition of such an item would be within the power of the State Government. The second reference was quashed in the view that the two references were or would be inconsistent with each other and that, in substance, the second reference not merely added to but superseded the first. It would be appropriate at this stage to read section 10 clause (5) of the Industrial Disputes Act:

"Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments."

(12) *B. N. Banerjee J. was concerned in Kesoram Cotton Mills Ltd. v. Second Labour Court*" and others (1962-5 Ind F L LR 308 with the Government adding by way of corrigendum the names of more workmen than had been originally included. The addition of those names by way of corrigendum was quashed on the ground that the workmen, whose names were subsequently added, did not constitute an establishment or group or class of establishment of a similar nature. While pointing out that the State Government had no power to add parties to the reference excepting under the provisions of section 10, his Lordship observed that it would be open to the State Government to make an independent or additional reference to the same Tribunal in respect of the workmen whose names were newly added taking care to observe that the State Government was held to be at liberty to correct, by a corrigendum-notification, an apparent error which had crept in describing the workmen under the appropriate list.

(13) A Division Bench of the Punjab High Court, consisting of Narula J. and Dua J. (as he then was) had occasion to consider, in *Dalmia Dadri Cement Ltd. v. State of Punjab* and others 1957 LI 222, a corrigendum notification in the light of

section 10 of the Industrial Disputes Act as well as section 21 of the General Clauses Act. In that case the earlier reference related to whether 95 workers, as mentioned in List A, had to be made permanent workers or not. By a subsequent corrigendum 43 names were added to the said list of 95 workers. The two contentions which were raised on behalf of the management were there was no jurisdiction in a State Government to add any person as party to a reference who was not originally so added except in cases where the same could be done in a pending reference u/s 10 of the Act; (2) section 10 of the Act could not be invoked by the State Government in that case because the names of persons originally mentioned and those sought to be added by way of corrigendum did not constitute a separate establishment, group or class of establishment, as was referred to, as envisaged by that provision. The Division Bench, observed that while the judgment of the Madras High Court in South India Estate Labour Relations Organization had not been dissented from by the Supreme Court in Ganguli it was not affirmed either; the power of the Government to amend the existing notification had been left open for consideration. The decision of the Calcutta High Court in new Ram Cotton Mills Ltd., was held not to be of any assistance to the management in the case before the Division Bench of the Punjab High Court since the State Government was allowed in that case to correct apparent errors in names. The impugned notification was, however, struck down by the Punjab High Court on three grounds: that the same was not an independent notification u/s (10); (ii) that the original notification did not need any amendment and could stand by itself whereas by the second notification a dispute between the two different parties was sought to be included in the existing reference. The conditions precedent for the exercise of jurisdiction u/s 10 were not present and (iii) that the impugned notification had not been expressed or purported to have been signed by the order of the Governor, as required under Article 166. This last ground, however, seems to have furnished the "inspiration for the present petitioner to raise the point for the first time in this Court that the corrigendum did not comply with Article 77 of the Constitution, Article 166 having no application to the present controversy which relates to a notification issued in a Centrally administered Union Territory. To this last contention, however, I shall revert later. In the light of the above principles the circumstances which led to the issue of corrigendum on 10th June 1970 may be examined. Along with the letter of the General Secretary of the union, dated 3rd June 1969 (Annexure Vi to the petition) a copy of the resolution of the union (Annexure Vii to the petition) was enclosed. The resolution was to the following effect:

"Resolved in the working committee meeting of Remington Rand Employees Association, Northern Unit, Asaf Ali Road, New Delhi, held on 30th May 1969 that a demand for removal of ceiling in the D.A. Scheme be and is hereby made upon the management of Messrs Remington Rand of India Limited, Asaf Ali Road, New Delhi."

(14) The resolution had also authorised the General Secretary of the union to

take necessary steps to place the above demand of the employees before the management to get the demand conceded through mutual negotiations or through adjudication. The Conciliation Officer's report to the Delhi Administration has not been placed before the Court. It is seen that the Lt. Governor was satisfied on a perusal and consideration of the report of the Conciliation Officer that an industrial dispute existed between the management of the Company, Sunlight Building, Asaf Ali Road, New Delhi and its workmen represented by the Remington Rand Employees Association, Northern Unit, Asaf Ali Road, New Delhi. It is worth recalling that the company's office at Asaf Ali Road had settled the dispute raised by the same Association (at Asaf Ali Road) relating to the dearness allowance payable not only to the workmen at Delhi but also to those employed outside Delhi.

(15) The contention of the management is that no demand had been made on the Administrative Officer of the Company at Asaf Ali Road, New Delhi, about the removal of the ceiling of the maximum dearness allowance on behalf of the workers employed outside Delhi. In reply to this contention reliance is placed upon the statement of claim of the workmen made before the Conciliation Officer (vide paragraph 6) which makes it clear that the demand was made on behalf of the employees working in Delhi regional office, its branches and depots under the Administrative control of the Delhi regional office. It is, Therefore, urged for the workmen that a mistake had been committed in scribing the Government's order of reference when the dispute was stated to be one between the workers on one side and the "Delhi Branch" on the other.

(16) In the written statement filed by the management before the Tribunal a preliminary objection was taken that the dispute was confined to the office of the company at Asaf Ali Road, New Delhi and its workmen and that the Tribunal could not enquire into any dispute concerning those workers employed outside Delhi, as the union sought to do in its statement of claim before the Tribunal. The union was not saying so, for the first time, before the Tribunal for it had been its position very clear during the conciliation proceedings. Even before the said written statement was filed on 15th July 1970 the corrigendum had been issued on 10th June 1970. The corrigendum was itself issued in pursuance of the request of the union in its letter dated 20th April 1970 to correct, even before the hearing of the case concerned, the words "Delhi Branch" which had been in advertently used in the place of "Delhi regional office" in the reference.

(17) The principle deducible from the decided cases appears to be that while the appropriate Government cannot supersede or cancel the reference made by it u/s 10 of the Industrial Disputes Act it can amend the reference in certain circumstances. I am unable to find any support in the decided cases for the contention that the Government cannot amend the reference in order to make it accord with the real dispute between the parties and the intention of the Government making the reference. The corrigendum was sought to be supported on behalf of the union only on the ground that it was a correction of a mistaken

description in other words, it was not sought to be supported as a fresh reference or including more workmen who had been left out in the original reference. In this view of the matter there would be no need to consider the question whether the Government had power to include within the scope of the reference made by it more persons than had been brought within the ambit of the reference. It is true no-doubt that the earliest dispute between the parties which was ultimately decided by the Supreme Court related only to those workmen of the company at Delhi. But after the decision of the Supreme Court the company had increased the maximum dearness allowance for the workers in the entire region, even for those employed outside Delhi from Rs. 200 to Rs. 270. The subsequent disputes with the company regarding the dearness allowance had been raised by those workers even outside Delhi; they had been settled, though the settlement was made by retaining the maximum dearness allowance of Rs. 270. A further dispute, relating to the maximum dearness allowance, was referred for adjudication by the Industrial Tribunal. Delhi and it was then held that the workmen including those outside Delhi could not get any relief by reason of the settlement dated 7th August 1964. The settlement was to be in force at least until 31st March 1969. In the past also disputes concerning those working outside Delhi had been referred to the Industrial Tribunal at Delhi. For instance, in Industrial Dispute No. 129 of 1960, the terms of reference included certain workers at Ajmer. The objection regarding want of territorial jurisdiction had been held against the company by the award of the Industrial Tribunal dated 16th September 1960. The ground on which the argument concerning want of territorial jurisdiction was repelled was that these workmen, though employed outside Delhi, were under the administrative control of the Administrative Officer of the Delhi Region, there being no other Administrative Officer for the other branches outside Delhi.

(18) It was against the above background that the present dispute had been raised by the workmen of the region, including those serving outside Delhi; this fact is settled beyond the pale of controversy by perusing the statement of the union before the Conciliation Officer. It was not even asserted in the course of the present dispute, either before the Tribunal or before this Court, that the Union had not agitated its demand for removing the ceiling before the Conciliation Officer concerning those employed outside Delhi also. Though it is settled law that a mere demand made to the Conciliation Officer would not tantamount to a demand on the management for the purpose of giving rise to an industrial dispute still when a demand had been made on the management it would be permissible to see the stand taken by the Association of workmen before the Conciliation Officer in order to ascertain what was the ambit of the demands made by the workers on the management. It is in this connection the absence of even any affidavit on behalf of the management to the effect that demands made during the conciliation proceedings were only demands made by those working in Delhi but not outside Delhi becomes significant. It is also not the case of the management that the Northern Unit of the present Association

having its office at Asaf Ali Road, New Delhi, was not representing the workers in the region outside Delhi. It is still more important to bear in mind, in this context, that there had been no rejection of the demand made on behalf of the workers outside Delhi, by the Conciliation Officer. According to section 12 of the Industrial Disputes Act the Conciliation Officer has to investigate the dispute and all matters affecting the merits and the right settlement thereof and if no settlement is arrived at he shall send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which a settlement could not be arrived at. On a consideration of the report if the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore. It is common ground in this case that the Delhi Administration had not conveyed to the union that their demand in respect of removal of the ceiling on the maximum dearness allowance had been referred for adjudication only in respect of the workmen at Delhi and that it was not referring the case for adjudication so far as the workmen outside Delhi were concerned. This has a very important bearing on the question debated before me whether the corrigendum was anything more than a mere verbal correction of the reference it had made already. If it was a mere verbal or clerical correction to make in order to bring out correctly the real dispute between the parties and to make it accord with the Government's real intention then there could be no valid objection whatever to the said correction by way of corrigendum. The Industrial Tribunal correctly found that the corrigendum was a correction of that description. On this finding no further disability could attach to the said reference. The further arguments in this regard, on the footing that by reason of the corrigendum the ambit of the reference had been widened by bringing in more workers within the scope of the reference, have no validity.

(19) It only remains to mention that one of the arguments advanced on behalf of the management in this regard was that even if the Government had power to issue the corrigendum it was not issued after expressing any further satisfaction about the existence of an industrial dispute between the workers outside Delhi and the management. But this argument also falls to the ground on the above finding that only a verbal or clerical error had been corrected. The fallacy underlying this argument would also be apparent in the light of the background that even previously the dispute had been settled by the management with their employees working within as well as outside Delhi. The whole class or group of workmen similarly situated and working in the same region having raised disputes concerning the maximum dearness allowance payable to them, in the absence of any material to show that the disputes had been confined to those working at Delhi, it is a fair inference that the reference made by the Government for adjudication of the said dispute related to those within and outside Delhi in this region.

(20) The second contention urged on behalf of the petitioner was that the Lt. Governor, Delhi, had no territorial jurisdiction to make any reference for

adjudicating the dispute of the management with the workers living outside Delhi. The nature of the Administrative control exercised by the Administrative Officer of the Company at Asaf Ali Road the Deputy Regional Manager having his office in Parliament Street, New Delhi, has been set out at the outset. In these circumstances the Industrial Tribunal found, as a fact, that the administrative control in this case in the matter of these workmen in the region employed outside Delhi was with Delhi. This finding being one on a question of fact, which is based upon the evidence of the Administrative Officer himself and there being no evidence contra could not be set aside by a Court exercising writ jurisdiction. The sum of the admissions made by the Administrative Officer (Shri Saraf), who was examined on behalf of the management before the Industrial Tribunal, was that the over-all administrative control of the staff of the branches and the depots vested in the regional office except that the day-to-day administration was looked after by the Branch Manager; the regional office appointed the staff at the branches and depots against the sanctioned strength and took disciplinary action by issuing charge sheets and holding inquiries. The actual rate of dearness allowance paid to the workers outside Delhi was different as compared to those in Delhi, but this is no reason for holding that these workers outside Delhi could not make a common demand with those in Delhi for the removal of the ceiling of the maximum dearness allowance to be paid, especially when the Branch Managers could not grant or revise the dearness allowance. In addition to these considerations various settlements had been arrived at between the union and the management at Delhi in respect of the employees in the region, outside Delhi. In this context the decision of the Industrial Tribunal, of the year 1960, holding that the dispute concerning workers in Ajmer could be referred to the Industrial Tribunal, Delhi, was pressed into service. This is cogent evidence of the fact that the administrative control of all the workmen in the region including those serving outside Delhi vested in the Delhi Office. In this view it is needless to canvas the further question whether the said decision of the Industrial Tribunal in I.D. No. 129/60 is res judicata in the present inquiry. What is, however, even more important, on this aspect, is that the Delhi Office itself had been making settlements concerning disputes pertaining to the dearness allowance with those working outside Delhi. Referring to such conduct on the part of the management the Industrial Tribunal has rightly observed that though the said conduct was not conclusive is yet " ample evidence of the fact of settlement in respect of those employees also being reached in Delhi. The exercise of administrative control is a very important feature on which the jurisdiction of the Industrial Tribunal to adjudicate would depend. It is not the mere submission of the charter of demands by the workmen or the holding of the Conciliation proceedings in a particular place that will give jurisdiction to the Government to refer industrial dispute for adjudication ; what is material, on the other hand, for giving such jurisdiction is the administrative control concerning appointments and dismissals at a particular place. These tests have been referred to by Pandit J. in National Tobacco Co., Employees Union (Regd), Jullundur Vs. Manohar Singh and Another, . A reference was also made to the leading case on the subject Lipton

Limited and Another Vs. Their Employees, (as his Lordship then was) speaking for the Supreme Court, held that on the finding that the Delhi Office controlled all its employees in the matter of appointment, leave, transfer, supervision. etc., whether employed in Delhi State or outside it, the Industrial Tribunal, Delhi had jurisdiction to adjudicate on the dispute since in such a case the Delhi State Government was the appropriate Government within the meaning of section 2 of the Industrial Disputes Act. In that case the Delhi Office controlled the salesmen and others employed in Punjab, Delhi, Rajasthan and Uttar Pradesh. An industrial dispute was raised in respect of fixation of grades and scales of pay. The contention, which was repelled, was that the Delhi Administration had no jurisdiction to make the reference in respect of those employed outside the State of Delhi. The Supreme Court applied the well known test of jurisdiction, namely, that a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction to cases arising under the industrial disputes also even though the Act did not deal with the cause of action and did not indicate what factors confer jurisdiction upon the Labour Court. The observations of Chagla C. J. in *Lalbhai Tricumlal Mills Ltd. v. Vin (DM) and others* (1956) LLJ. 556 were also approved in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, though in that case the finding was that the Punjab Government had no authority to make a reference with regarding to the closure of a branch within its limits, the validity of the closure itself not being in dispute.

(21) Reliance is also placed for the union on the principle adopted by the Supreme Court in *Sindhu Resettlement Corporation Ltd. v. industrial Tribunal, Gujarat and others*. (1968) 1 LLJ. 834 , that a dispute becomes an industrial dispute only when the demand is made by the employees on the employer. It is argued, Therefore, that a demand having been made by the employees on the employer at Delhi and the same not having been met the cause of action for this dispute arose at Delhi and not outside Delhi. But this again would depend upon a construction on whose behalf the demand was made. When the demand made on the employer is read in the light of the claim made by the union to the Conciliation Officer there can be no doubt that the demand was made also on behalf of those who were employed outside Delhi. The Industrial Tribunal was, Therefore, correct in understanding the said demand as one having been made on behalf of those employed outside Delhi also. At any rate I can find no basis for the contention of the management that the demand was originally made only on behalf of those working in Delhi but not outside and that the demand was subsequently enlarged by including those working outside Delhi also. It is obvious that the interpretation placed by the management does not fit the facts of this case, especially having regard to the background of demands made on the Delhi Office by the union on behalf of those working outside Delhi also and the management also settling them in respect of such workmen also.

(22) My attention was also drawn to a decision of a Division Bench of the Madhya Pradesh in *Association of Medical Representatives (M&V) v. Industrial Tribunal*

Madhya Pradesh, Indore and another (1966) 1 LI 614. A reference had been made by the Madhya Pradesh Government. The workmen concerned was an employee of a company with its head office at Bombay selling its products in the areas falling within the State of Madhya Pradesh. The work of the representatives so appointed was controlled and supervised by the head office of the company at Bombay and they were paid their salaries also by the head office. The mere fact that the workman in that case was engaged in the activity of pushing the sales of the products of the company in the areas within the State of Madhya Pradesh would not amount to the company running an undertaking in that State.

(23) In the case on hand it was seen that only a clerk was in charge of each of the depots in Simla and Jammu. Pandit J. held in National Tobacco Co. Employees Union (8) above referred to, that in the case where the employer-company has branches in more than one State of the Indian Union, the provision under Explanation Ii to section 20 of the CPC could be resorted to and that a company would be deemed to carry on business in the place where it has its sole or principal office. The observations of Chagla C. J. in Lalbhai Tricumlal Mills Ltd., (IT)) above referred to, were concurred in. It was further pointed out that the said dictum of Chagla C. J. had been approved by the Supreme Court in the Indian Cable Co. Ltd. (II) above referred to. The decision of the Madhya Pradesh High Court in the Association of Medical Representatives (13), was also followed.

(24) Shri Radhey Lal Aggarwal, learned counsel for the management, relied upon section 7B of the Industrial Disputes Act which enables the Central Government to refer to a National Industrial Tribunal disputes of such a nature where industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. This is only an enabling provision to which resort could be had by the Central Government in the matter of disputes which could not be appropriately referred to a single State Government by reason of the disputes covering industrial employees in more than one State. Neither section 7B nor any of the other provision relied upon by Shri Aggarwal in this connection, namely, 10, 10A, 24 and 34 seem to have any bearing on the present question whether the dispute squarely fell within the jurisdiction of the Delhi State-to make a reference u/s 10 of the Act. Section 10 enables the appropriate Government to prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. Section 10A(I) pertains to voluntary reference of disputes to arbitration; section 24(2) relates to illegal strikes and lock-outs; section 34 prevents any court from taking cognizance of an offence punishable under the Act within the authority of the appropriate Government. If by reason of the administrative control vesting in the Delhi State in the present case it was competent for it to make reference, I do not see how reference to any of these provisions is at all relevant; they are only supplemental provisions which can be invoked in cases where there is need.

(25) Shri Aggarwal next argued that it is not shown who had corrected whose

mistake in the reference originally made. It is plain that a mistake had been in the matter of scribing the reference which mentioned the Delhi Branch even though, as explained already, the dispute is found to have been one to which all those working in the region, even outside Delhi, were involved. It is obvious that the clerical mistake in description had been corrected by the Delhi Administration when the same was pointed out to it and that it was competent for it to do so. This disposes of the second point newly taken in this Court.

(26) Another point has been taken by the management in this court that the corrigendum had not been authenticated as required by Article 77 of the Constitution, without taking it before the Industrial Tribunal. If the same had been taken evidence would have been led to show that the authentication of the corrigendum had been properly made. Rajindar Sachar J. had only allowed the above additional ground to be taken by way of amendment subject to the same being found permissible at the time of the hearing of this writ petition. It seems to me that this point not having been taken before the Industrial Tribunal, Delhi, it would not be fair to permit the same being urged for the first time in this Court, especially since it involves the taking of additional evidence on this question. The Supreme Court declined to consider the point, taken for the first time before the High Court as to whether the order of dismissal had not been expressed in the name of the Governor but that had been signed by the Chief Secretary alone vide *State of Uttar Pradesh Vs. Om Prakash Gupta*, .

(27) It was contended finally that the union had not given notice to terminate the award dated 20th January 1969 which, it is contended, remained in operation for a period of one year from the date it became enforceable. This is no doubt the effect of section 19(3) of the Act but sub-section (5) provides that nothing contained in sub-section (3) will apply to any award, which by its nature, terms or other circumstances does not impose any continuing obligation on the parties bound by the award. In these circumstances, the further requirement of section 19(6) that the award shall continue to be binding on the parties until a period of two months elapses from the date on which notice is given by any party bound by the award to the other party intimating its intention to terminate the award, can have no application. It will be seen from that award itself that the previous settlement which was to remain in operation till the 31st March 1969 and had not been terminated by a valid notice of termination was held to be a bar to a fresh adjudication of the same dispute during the said period. Issue No. 1 was accordingly raised as follows:-

"Whether in view of the subsisting settlement and the award based thereon, dated 20th August 1964, the present reference is invalid?" It was found in paragraph 9 of the Award as follows: "I hold that the subsisting settlement dated 7th of August 1964 on which the award of the Tribunal was based is a bar to this claim of the workmen, and the reference is not valid." The ultimate conclusion was expressed as follows: "In view of my findings on issue No. 1 above the workmen are not entitled to the relief which they seek in these proceedings and

the award is made accordingly."

(28) It will thus be seen that the previous settlement was pleaded in bar of the reference to the Industrial Tribunal for adjudicating the subject matter of that settlement. This plea was upheld and the reference itself was held to be bad. I fail to see how in these circumstances it could be contended that the said award continued in operation for any subsequent period except that the previous settlement was in force till 31st March 1969.

(29) In the result this writ petition which is seen to be without merit is dismissed with costs. Counsel's fee Rs. 300.