
(1980) 08 MAD CK 0036
In the Madras High Court
Case No : Writ Appeal No. 10 of 1977

S. Ramaswamy Naidu

APPELLANT

Vs

The Secretary, District Motor and Lorry Transport Workers
Union and Others

RESPONDENT

Date of Decision : 26-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(2), 10(4), 10A(3A)

Citation : (1981) ILR (Mad) 375

Hon'ble Judges : M.M. Ismail, C.J.;Sathar Sayeed, J

Bench : Division Bench

Advocate : P. Chidambaram, for the Appellant; R. Ganesan and M.R.
Narayanawami for N. Balasubramaniam, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Islamic, C.J.—This is an appeal against the order of Mohan J., dated 11th February, 1976 allowing Writ Petition No. 1962 of 1972 filed by the first Respondent herein.

2. There is a long history behind this litigation, but most of the facts are not in controversy. The Appellant herein and one Srinivasaga Naiad were brothers, and the widow of the said Srinivasaga Naiad is the proprietor of the third Respondent herein. There was suit for partition in Original Suit No. 6 of 1962 on the file of the Court of the Subordinate Judge, Tirunelveli between the Appellant and the said Srinivasaga Naiad. During the pendency of the suit, Srinivasaga Naiad died and his widow Parijathammal was brought on record as the legal representative of deceased Srinivasaga Naiad. That suit led to a first appeal, namely, Appeal Suit No. 353 of 1965 on the file of this Court. In the appeal the parties entered into a compromise and a decree was passed in terms of the compromise. The compromise decree Inter alia provided that the third Respondent herein, namely the Proprietor of Sri Balasaraswathi Transports, Palayamkottai, Tirunelveli;

should transfer to the Appellant herein three route buses with their permits subject to the payment of certain monies to Parijatham mal before a specified date. It was also provided in the compromise decree that the said Parijathammal should pay wages and salary payable to the employees in respect of the buses allotted to the Appellant herein till the end of 31st December, 1965, that in respect of those three buses, the Appellant herein should take the services of seven drivers and some other employees including one cleaner and two fitters and that the service conditions and other facilities shall be such as if they were in continuous service of the third Respondent herein. It was further provided in the compromise decree that the Appellant herein shall be in possession of the buses as from 1st January, 1966 with the existing employees and that the third Respondent herein shall execute necessary applications for the transfer of the bus permits on or before 1st April, 1966 in favor of the Appellant herein so as to make the transfer effective from 1st January, 1966. Srinivasaga Naiad, the husband of Parijathammal, was also the proprietor of another business called Bharath Motor Engineering Works, which served as the workshop for the transport business of the third Respondent herein. One Ramalingam and Shanmugha Sundaram, working as Assistant Fitters in Bharath Motor Engineering Works, were sought to be transferred under the terms of the compromise to the bus business allotted to the Appellant herein. The Appellant took over the services of Shanmugha Sundaram and kept him in the employment for a period of one month and twenty-three days and paid him the salary for the month of January 1966. By a letter dated 23rd February, 1966 the Appellant terminated the services of Shanmugha Sundaram on the ground that his services were superfluous. This termination gave rise to an industrial dispute. During the pendency of the conciliation proceedings the parties made a joint request to the Government to refer an industrial dispute to the Labour Court, Madeira. This was done pursuant to Section 10(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Section 10(2) of the Act states:

Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party shall make the reference accordingly.

When the first Respondent herein, representing "Shanmugha Sundaram and the third Respondent herein made a joint request to the Government to refer the dispute, the Government passed the following order;

Whereas the management of Sri Balasaraswathi Transport Palayamkottai represented by its Manager and the workmen represented by the Secretary, District Motor and Lorry transport workers Union, Tirunelveli duly authorised in this behalf, have applied jointly to the Government of Madras, in the prescribed manner, for a reference for adjudication of the industrial dispute in regard to matters mentioned in the annexure to this order:

And whereas the Government of Madras are satisfied that the persons applying represent the majority party;

Now therefore in exercise of the powers conferred by Sub-section (2) of Section 16 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Madras hereby directs that the said dispute be referred for adjudication to the Labour Court, Madurai.

Annexure.

1. Whether the non-employment of driver Thiru S. Raman is justified, if not, to what relief he is entitled?

2. Whether the retrenchment of Assistant Fitters Thiru A. Ramalingam and Thiru C. Shanmugha Sundaram and cleaner Thiru Pechimuthu is justified; if not to what relief they are entitled.

We are now concerned only with Shanmugha Sundaram referred to in item 2 in the Annexure. When the matter was referred to the Labour Court, during the pendency of the said reference, the first Respondent herein took out Application No. 406 of 1967 to impleaded certain persons as supplemental Respondents. The Labour Court allowed that application by its order, dated 18th November, 1967 and by that order the Appellant herein was brought on record as one of the Respondents. Subsequently, on a consideration of the entire materials, the Labour Court passed an award. That award directed the third Respondent herein to re-instate the said Shanmugha Sundaram with back wages with effect from 24th February, 1966. To quash this award the third Respondent herein filed Writ Petition No. 1825 of 1969 on the file of this Court and that writ petition came to be disposed of by Palaniswamy J., on 21st September, 1970. To that writ petition, in addition to the first Respondent herein as the third Respondent, the Appellant herein was also impleaded as the second Respondent, the Presiding Officer, Labour Court, Madurai, being the first Respondent, Palaniswamy J., by his order referred to above, allowed the writ petition and quashed the award passed by the Labour Court. The learned Judge took the view that after the transfer of the buses from the third Respondent to the Appellant herein and after the employment of the said Shanmugha Sundaram by the Appellant herein for a period of one month and twenty-three days till his services were terminated on 23rd February, 1966, there was no question of the third Respondent herein being directed to reinstate the said Shanmugha Sundaram. An argument would appear to have been advanced before the learned Judge that the Appellant herein entertained the said Shanmugha Sundaram in his service under the erroneous impression that he was an employee of the bus service of the third respondent herein once it was realised that the said Shanmugha Sundaram was not an employee in the bus service, but only an employee of the independent business of Srinivasaga Naidu in Bharath Motor Engineering Works, the Appellant herein was not under an obligation to take him into his service and that, therefore, the Appellant herein was entitled to terminate the services of Shanmugha Sundaram.

The learned Judge Palaniswamy J., did not accept this case of the Appellant herein put forward before him for two reasons. One was that under the compromise entered into between the Appellant herein and Srinivasaga Naidu's widow, the Appellant was bound to take the said Shanmugha Sundaram into his service, and the other was that even the termination of the services of Shanmugha Sundaram was not on the ground that he was mistakenly entertained by the Appellant herein, but on the ground that his services were superfluous. Having come to this conclusion, the learned Judge had to decide what should be done further? On behalf of the first Respondent herein, a request was made to the learned Judge that on the basis of these findings the learned Judge himself could give a direction to the Appellant herein to reinstate the workman concerned in his business. As against this, on behalf of the Appellant herein it was contended that the Appellant was not a party to the industrial dispute, though subsequently impleaded as a Respondent to the industrial dispute, and further the Labour Court itself could not have directed the Appellant to reinstate the workman concerned, because that would be outside the scope of the reference made to the labour Court and consequently, this Court, in exercise of its Jurisdiction under Article 226 of the Constitution of India, could not do what the Labour Court itself could not have done. The learned Judge accepted this contention of the Appellant herein and pointed out that the matter would have to go back to the labour Court for the purpose of considering the question whether the grant of any relief in favour of the workman as against the Appellant would enlarge the scope of the reference as contended for by the Appellant herein before the learned Judge, and while doing so, the Labour Court would have to bear in mind the effect of Section 18(3)(b) of the Act and the fact that the impleading of the Appellant as a respondent to the dispute had become final.

3. It was thereafter the matter went back to the Labour Court. Before the Labour Court. It was argued on behalf of the Appellant that any claim by the workman as against the Appellant, before the Labour Court would be outside the terms of the reference, because the reference was made to the Labour Court on a joint request made by the first Respondent and the third Respondent herein and consequently the relief should be confined as between these two only and the relief should not be granted against the Appellant herein who was not a party to the industrial dispute. In fact, the argument that was put forward before the Labour Court was repeated before Mohan J., that the law was that if a dispute was between A and B, it could not be converted into a dispute between A and C and relief could not be granted against C. The Labour Court accepted his argument. The Labour Court pointed out that the reference was made u/s 10(2) of the Act; the Jurisdiction of the Labour Court springs from the terms of the reference; therefore, any claim on the part of the workman as against the Appellant herein for re-instatement would enlarge the scope of the reference being outside the terms of the original reference made to the Labour Court; and before the reference was made, the workman had not made any demand against the Appellant herein. In the result, the Labour Court passed an award in the

terms stating that if any relief is given to the workman as against the Appellant, that would enlarge the scope of the reference made to (sic) and hereby outside the jurisdiction of the Labour Court

4. It is to quash this award of the Labour Court, the present writ petition which has given rise to this writ appeal was filed before this Court by the first Respondent herein, and the same was, allowed by the learned Judge (Mohan J.). The learned Judge took the view that generally the law was in accordance with the stand taken by the Appellant herein, but the judgment of Palaniwamy J., made at the difference and consequently, any award that may be passed by the Labour Court would be binding on the Appellant herein, whose impleading as a party to the Industrial dispute had become final, and that, therefore, the Labour Court could pass an award directing the Appellant herein to re-instate the workman concerned. It is against this judgment the present appeal has been filed.

5. The learned Counsel for the Appellant put forward two contentions before us, One was that the jurisdiction of the Labour Court springs from the terms of the reference made to it by the Government and in this particular case, the reference was only in relation to a dispute between the first Respondent and the third Respondent and there was no dispute between the first Respondents and the Appellant herein and consequently, the Labour Court had no jurisdiction to grant any relief against the Appellant herein. This was amplified by putting forward the contention that on the earlier occasion, Palaniswamy J., definitely and specifically directed the Labour Court to into the question whether the grant of any relief against the Appellant herein would enlarge the scope of the reference or not", and pursuant to this order of remand, the Labour Court went into the question and came to the conclusion that the grant of any relief in favour of the workman against the reference and the learned Judge, Mohan J., had not said anything about this and he had not differed from the view taken by the Labour Court on this aspect, and, therefore, the learned Judge had no jurisdiction to quash the award and direct the Appellant herein to reinstate the workman concerned. The second argument is purely based upon the fact that simply because the Appellant herein was impleaded as a party to the industrial dispute, no liability can be imposed upon him when the industrial dispute was not between the Appellant and the concerned workmen and Section 18(3) of the Act cannot jpsso facto operate so as to compel the Appellant herein to reinstate he workman Shanmugha Sundaram.

6. We shall now consider these two submissions.

7. It is not disputed that Palaniswamy J., passed the order dated 21st September, 1970 directing the Labour Court to go into the question whether the grant of any relief in favour of the workman as against the Appellant herein would enlarge the scope of the reference. In paragraph 9 of his judgment which itself has been extracted by the Labour Court as well as the learned Judge, Mohan J., it is stated as follows:

On behalf of the union, the third Respondent, (the first Respondent herein), it was submitted that inasmuch as the second Respondent (Appellant herein) has been brought on record and that inasmuch as the Labour Court has also found that the presence of the second Respondent is necessary, a direction can be straightaway given in this proceeding itself for reinstatement of the workman by the second Respondent. As against this contention, it was submitted on behalf of the second Respondent that such a direction would enlarge the scope of the reference which was made at the instance of the Petitioner (third Respondent herein) and the workman, that the Labour Court would have no jurisdiction to pass such an award and that if the Labour Court itself would have no jurisdiction to pass such an award, this Court in writ jurisdiction cannot give such a direction. The second Respondent was on record by the order of the Labour Court on an application taken out by the workers, union. Against that order of impleading, the second Respondent did not take any steps. The Labour Court, while holding that the presence of the second Respondent, in the reference is necessary, has not said that the second Respondent was summoned without proper cause. This is that the Labour Court has observed in the concluding portion of paragraph 9 of its award:

Therefore, I find that the presence of the second Respondent in the reference is necessary. There is also the question of the binding nature of the award against him having regard to the provision, of Section 18(3) of the Industrial Disputes Act.

After extracting Section 18(3), the learned Judge, Palaniswamy J., proceeded to state:

The Labour Court, in the instant case, has merely referred to Section 18(3) after expressing the view that the presence of the second Respondent is necessary. In terms of Section 18(3)(b) it would have to be held that the award is binding upon the second Respondent also as there is no recorded opinion of the Labour Court that the second Respondent was summoned without proper cause. It was on that basis it was contended on behalf of the workers' union that the award in terms is binding upon the second Respondent. This matter requires further examination by the Labour Court in view of the contention on the second Respondent that, if an award were to be passed against him, it would enlarge the scope of the reference and also it is not incidental to a dispute which has been referred. It is open to the Labour Court to examine the question afresh keeping in view the fact that its impleading the second Respondent has become final and also in the light of its finding that the presence of the second Respondent in the reference is necessary.

It was in view of the above direction contained in the order of Palaniswamy J., in the subsequent award passed on 31st May, 1971 the Presiding Officer, Labour Court, Madurai, specifically went into this question as to whether the grant of any relief to the workman against the Appellant herein would enlarge the scope of the reference before it. After referring to certain decisions cited on behalf of the

Appellant herein, to which we ourselves shall make reference in the course of this judgment, the Labour Court came to the conclusion that any relief granted in favour of the workman as against the Appellant herein would enlarge the scope of the reference. Admittedly, the learned Judge, Mohan J., did not go into the question and come to the conclusion that the Labour Court was in error in holding that if relief is granted in favour of the workman as against the Appellant, it would enlarge the scope of the reference made to it.

8. It is against this background we propose to consider the arguments advanced before us and the decisions cited before us. Before doing so, it is desirable to extract Section 18(5) of the Act, because the same provision has been referred to repeatedly at every stage.

Section 18(3) of the Act states:

A settlement arrived at in the course of conciliation proceedings under this Act of an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on:

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and
- (d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons, who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons, who subsequently become employed in that establishment or part.

9. We shall now express our views on the scope of the reference in the present case and the finding of the Labour Court that any relief that may be granted in favour of the workman as against the Appellant herein would enlarge the scope of the reference and then proceed to consider the decisions cited.

10. We have extracted Section 10(2) of the Act already. There are certain peculiar features arising from the language of Section 10(2). (1) The parties to the dispute are identified and they alone apply to the Government for a reference; (2) when the parties to the dispute are identified, the dispute itself is crystallised and it is with reference to that dispute the reference is prayed for; and (3) when the parties have agreed and either jointly or separately request the Government to make a reference to the Labour Court or the Tribunal, the

Government are under an obligation to make a reference, if the Government are satisfied that the persons applying represent the majority of each party. It is to be noted that once these conditions are satisfied, the Government have no discretion whatever in the matter and they are under a statutory obligation to make a reference. This provision in Section 10(2) is in contrast with the provision contained in Section 10(1) of the Act. u/s 10(1) of the Act, the provision is:

Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing....

Consequently, u/s 10(1) the Government have a right to consider the expediency of making a reference and, if it comes to the conclusion that it is inexpedient to make a reference, it need not make a reference to the Labour Court or the Industrial Tribunal. On the other hand, u/s 10(2) of the Act, once the conditions referred to therein are satisfied, the Government have no such discretion or opinion, and the Government are bound to make a reference to the Labour Court or the Tribunal. It is this feature of Section 10(2) that will have a bearing on the impleading of the Appellant herein in the proceedings before the Labour Court. Once the parties to the dispute are identified and the dispute itself is crystalised, the granting of relief in favour of one party as against a party who, was not a party to the dispute will certainly enlarge the scope of the reference, even though that party had been impleaded u/s 18(3) of the Act. That consequence arises, because of the specific features present in the present case where the reference is made u/s 10(2) of the Act. Apart from this, u/s 18(3), it cannot be said that in every case, irrespective of the nature of the relief granted, a party, who had been impleaded as a party to the proceedings before the Labour Court or Industrial Tribunal can be said to be under an obligation to grant the relief to the workman. As a matter of fact, Section 18(3) itself makes a difference between a party to the industrial dispute and other parties. Section 18(3)(a) uses the expression all parties to the industrial dispute, while Section 18(3)(b) uses the expression all other parties summoned to appear in the proceedings and consequently, when a matter arises u/s 10(2) and the parties to the industrial dispute are identified, the relief which the workman can get under the award can be implemented against some other party only in certain cases and not in all cases. For instance, if a relief that is granted is one of re-instatement, and the employer ceases to exist, and the establishment has been transferred to somebody else namely, the transferee has been summoned to appear in the proceedings, naturally it can be said that that party so impleaded, by virtue of his taking over of the establishment to which the industrial dispute relates, is under an obligation to re-instate the employee. But that cannot be said in a case where those conditions are not satisfied and where the party has just been impleaded as a party without anything more. The same thing can be said of any award dealing with the general service conditions of the employees because in such a context, by virtue of the transfer of the establishment, the employees will become the employees of the transferee and consequently, the award will be binding on the transferee and equally on the persons employed or persons who

are subsequently employed in the establishment. Can the same thing be said with reference to the particular dispute in the present case? As we have already pointed out, the dispute originally was between the first Respondent and the third Respondent. It was those two persons who jointly applied to the Government for making a reference to the Labour Court. In such a context, the parties to the dispute were the first Respondent and the third Respondent the relief claimed being only reinstatement of the employee as against the third Respondent, and that relief can be granted only as against the third Respondent and none-else. Even if somebody else has been impleaded as a party Section 18(3) will not automatically involve the consequence of the party so impleaded being under an obligation to re-instate the workman in the present case, because that will certainly enlarge the scope of the reference, as we have indicated already.

11. It is against the background of this view of ours on the scope of Section 10(2) and the facts present in the case we propose to refer to the decisions cited before the learned Judge and dealt with by him in his order.

12. The first decision is that of the High Court of Kerala reported in *Abraham v. Industrial Tribunal No. 2. Ernakulam* (1958) II L.L.J. 725. The head-note itself says:

Under Section 12 of the Industrial Disputes Act a necessary or proper party to a dispute referred for adjudication could be summoned at the instance of one of the parties or *sou motu* by the tribunal and the award eventually passed would be binding on the party so summoned unless the tribunal records that the said party was summoned without proper cause. But there is nothing in Section 18 which could be possibly construed as authorising the tribunal to enlarge the ambit or alter the character of a dispute referred for adjudication u/s 10(1)(c) of the Industrial Disputes Act, 1947. When the dispute referred for adjudication was between A and B, a third party C could be made a party to such proceedings, but the dispute between A and C which was not the subject-matter of reference could not be adjudicated. In such circumstances, the industrial tribunal has got no jurisdiction to grant any relief against such party.

Mohan J., refers to this decision and states:

This case again does not apply in view of the order of *Palaniswamy, J.*, referred to above. But, as a proposition of law, this will hold good.

We are unable to share the view of the learned Judge that, but for the decision of *Palaniswamy, J.*, the proposition of law laid down the Kerala High Court will hold good. All that *Palaniswamy J.*, has done was to direct the Labour Court to consider the question whether the grant of any relief to the workman as against the Appellant herein would enlarge the scope of the reference or not and the Labour Court had gone to the question and held that it would enlarge the scope of the reference and, therefore, the Labour Court would have no jurisdiction. As we have pointed out already, the learned Judge had not held that the Labour

Court was in error in coming to this conclusion and, therefore, we are unable to share this view of the learned Judge with reference to the effect of the order of Palaniswamy J., notwithstanding his view that the law laid down in the decision referred to above holds good as a proposition of law.

13. The next decision relied on is that of the Supreme Court reported in *Hochtief Gammon v. Industrial Tribunal, Bhubaneswar, Orissa* (1964) II I.L.J 460. In that case, an industrial dispute in regard to the payment of bonus arose between the Appellant, Hochtief Gammon, and the Respondents, workmen, represented by the Rourkela Workers Union, Rourkela. This dispute was referred for adjudication to the Industrial Tribunal, Orissa, by the Government of Orissa on 14th November, 1960. After the reference was received by the Tribunal, it passed an order on 17th November, 1960 that notice of the reference should be issued to the parties concerned. Purporting to give effect to this order, the office of the Tribunal issued notices not only to the Appellant and the Respondents, but also to the Deputy General Manager Hindustan Steel, Ltd., This was so done apparently because a copy of the notification of the Government of Orissa containing the order of reference had been served on the said Deputy General Manager. After the notices issued by the Tribunal were received by the Deputy General Manager of the Hindustan Steel, Ltd., he appeared before the Tribunal and urged that the Hindustan Steel Ltd., was not concerned or interested in the dispute and should not be added as a party to the reference. Meanwhile, the Appellant itself made an application to the Tribunal on 21st March 1961 and contended that the interests of Hindustan Steel Ltd., and the Appellant were common in the proceedings pending before the Tribunal and so, Hindustan Steel Ltd., should be joined as a party. In this application, the Appellant alleged that Hindustan Steel Ltd., was a necessary party, because the material documents which may have to be proved in the proceedings were with the said concern and, in fact, the enquiry in question would not be complete with the said concern being joined as a party. The Tribunal then considered the question of joining Hindustan Steel Ltd., as a party and held that it would decide the matter later. Meanwhile, the Tribunal directed that Hindustan Steel Ltd., which had appeared in response to the notice issued to it, should remain present during the hearing of the reference on the merits. It is against this order, the Appellant moved Orissa High Court under Article 226 of the Constitution of India and prayed that the order passed by the Tribunal refusing to deal with the matter should be set aside and Hindustan Steel Ltd., should be joined as a party to the reference before it. The High Court observed that the Industrial Tribunal had not yet passed a final order u/s 18(3)(b) of the Act and so, without expressing any opinion on the merits of the controversy between the parties, the High Court treated the application as incompetent, because it was premature. Against this decision, the Appellant went up to the Supreme Court. The Supreme Court dealt with the scope of Section 18(3)(b) and Section 10 of the Act and the power of the Industrial Tribunal to implead parties. While dealing with this, the Supreme Court observed;

In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed u/s 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1962 made substantial amendments in Section 10. One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to refer the dispute of any matter appearing to be connected with, or relevant to, the dispute whether it relates to any matter specified in Schedule II, or Schedule III, to a Tribunal for jurisdiction.

In other words, u/s 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense, the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto etc., and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons, who are not joined to the reference should be brought before it, it may be able to make an order in that behalf u/s 18(3)(b) as it now stands....

Reverting then to the question as to the effect of the power which is implied in Section 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government u/s 10(1). What the Tribunal can consider in addition to the dispute specified in the order of reference, are only matters incidental to the said disputes and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power u/s 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined, who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons, who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in

the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may does necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test may well be, would the non joinder of the party make the arbitration proceedings in effective and unenforceable. It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.

The above observations of the Supreme Court are of immediate relevance to the present case from more than one point of view. In the first place, we have already indicated the features special to a reference u/s 10(2) and the differences between them and those in a reference made u/s 10(1) of the Act. In addition to the features we have indicated, there is also the further feature which the Supreme Court has pointed out with reference to Section 10(1)(d) as a result of the amendment of the Act by Act XVIII of 1952 by which power is given to the Government not only to refer an industrial dispute but also matters appearing to be connected with or relevant to the said dispute. This power is not available to the Government in a case coming u/s 10(2) of the Act. Secondly, having regard to the limited jurisdiction of the Tribunal or the labour Court, the Tribunal or Labour Court can add parties only for the purpose of deciding matters incidental to the reference already made to it. Whether relief should be given as against the third Respondent or as against the Appellant herein cannot certainly be said to be a matter incidental to the reference made to the Labour Court, because the reference was made on a, joint application or both the parties namely Respondents 1 and 3, who had not only identified themselves to be parties to the dispute, but also crystalised, the dispute. Thirdly, we have grave doubts whether a party can be impleaded with reference to Section 18(3)(b) on the ground that a particular party to the dispute does not fully represent the employer or employee, in view of the provision contained in Section 10(2) itself, because even before the reference is made, the Government must be satisfied that the persons applying represent the majority of each party. It may be in a case where, subsequent to the reference, the establishment concerned changed hands as a running concern the Labour Court may have the power to implead the transferee of the establishment as a party u/s 18(3)(b).

14. In this context, the decision of the High Court of Bombay reported in Maharashtra State Electricity Board v. Industrial Tribunal, Bombay (1965) II L.L.J. 458 will be of interest. In that case, disputes in regard to various service conditions between the workmen and the management of an electricity supply undertaking were referred for adjudication proceedings, the licence of the company under the Indian Electricity Act, 1910, was revoked by the State Government. Substantial portion of the machinery and assets of the company were sold to the State Electricity Board. The sale and the price thereof were effected and determined in accordance with the provisions of to the Indian Electricity Act, 1910. The terms of the sale agreement inter alia provided that the Board would not be under any obligation to honour or fulfil any contracts in

regard to supply of electricity entered into by the Company. Similarly, the Board had the option to get the benefit of assignment of contracts in import licences which it might select. The assets were sold free from encumbrances. The Board was under no obligation to take over or employ any of the employees of the Company, The Company alone had to meet all the claims of the employees. On revocation of the licence, the Company terminated the services of all the employees and settled their accounts. They were offered and paid retrenchment compensation in accordance with the provisions of Section 25-FF read with Section 25-F of the Act. The Board had the option to take into service any of the old employees on terms and conditions to be fixed by it. One of the unions representing the concerned employees in the adjudication proceedings asked for the Board to be impleaded as a party to the adjudication proceedings on ground that it was successor-in-interest of the company having purchased the business of the company as a going concern. The Board contended that it was not a successor-in-interest of the company. According to the Board, the business of the company was closed on revocation of its licence and the services of the employees were terminated and hence it was neither a necessary nor a proper party to be impleaded. The Industrial Tribunal, overruling the said contentions, impleaded the Board as a party to the dispute on around that the agreement between the company and the Board was in substance a transfer of company's business to the Board as a going concern, and that there were continuity and identity of the business and practically the entire business and all the equipment and machinery were sold to the Board. The validity of this order was impugned in a writ petition on behalf of the Board and the High Court allowed the writ petition. After extracting Section 18 of the Act and also after referring to certain decisions of the Supreme Court, the High Court held that the various clauses of the agreement showed that the Board was not the successor-in-interest of the company, even though the identity of the business was there and the sale was of substantial partition of the machinery of the company; the liabilities of the company were not taken over by the Board; it had the option to select contracts and orders entered into by the company; the undertaking was sold free from encumbrances; it had no liability to take over or employ any of the employees of the company; the company's investments in shares, debentures and securities and the tenancy rights, furniture and office equipment of the company were agreed not to be sold; the provisions of the Indian Electricity Act., 1910, also showed that the transfer and the sale of the electricity undertaking is not a transaction between the willing parties; the price of the undertaking also is not fixed as between two bargaining parties, but is fixed in accordance with the provisions of the Act; it was not the sale of the business as a whole; and hence the finding of the Industrial Tribunal that the Board was the successor-in-interest of the Company could not be sustained. The relevancy of this judgment is that it dealt with the scope of Section 18(3)(b) of the Act. The learned Judge Mohan J., has referred to this judgment also but took the view that in that particular case, the decision was based on the terms of the agreement between the company and the Electricity Board. It may be so, but yet, the High Court laid down the

principles applicable to the case of an award being binding on a party implead to the proceedings before the Tribunal or the Labour Court u/s 18(3)(b) of the Act.

15. Having regard to the above features, we are clearly of the opinion that the learned Judge was in error in holding that the Labour Court should have made an award directing the Appellant herein to reinstate the workman concerned. For the reasons we have indicated above, particularly in the light of the provision contained in Section 10(2) of the Act and the actual terms of reference which the Government made to the Labour Court, from which alone the jurisdiction of the Labour Court springs, it is not possible to hold that the Labour Court has jurisdiction to direct the Appellant herein to re-instate the workman concerned in his service. It may be noted that even after the workman was employed by the Appellant for one month and twenty-three days and after the Appellant terminated the services of the workman on 23rd February, 1966, the first Respondent, representing the workman, chose to identify only the third Respondent as a party to the dispute and requested the Government for making a reference on that basis. However, that unfortunate fact cannot enlarge the jurisdiction of the Labour Court; nor can it confer power upon this Court under Article 226 of the Constitution of India to make an order directing the Appellant to reinstate the employee. Under these circumstances, the appeal is allowed, and the order of the learned Judge is set aside and writ Petition No. 1962 of 1972 filed by the first Respondent herein will stand dismissed. The parties will bear their respective costs here as well as before the learned Judge.