

**(1975) 12 CAL CK 0028**  
**In the Calcutta High Court**  
**Case No : Matter No. 58 of 1975**

Statesman Ltd.

APPELLANT

Vs

National Industrial Tribunal

RESPONDENT

**Date of Decision :** 23-12-1975

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes (Central) Rules, 1957 — Rule 1(2), 28  
Industrial Disputes Act, 1947 — Section 10, 10(1A), 17, 33(3), 33C  
Working Journalists (Fixation of Rates of Wages) Act, 1958 — Section 6  
Working Journalists and Other Newspaper Employees (Conditions of Service) and  
Miscellaneous Provisions Act, 1955 — Section 10, 12, 13, 17, 17(1)

**Citation :** (1977) 1 ILR (Cal) 436

**Hon'ble Judges :** B.C. Basak, J

**Bench :** Single Bench

**Advocate :** P.P. Ginwalla and Arijit Chowdhury, for the Appellant; P.P. Ghosh, D.N. Das and N. Gooptu, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

B.C. Basak, J.—In this application for appropriate writs under Article 226 of the Constitution of India the Petitioner is challenging an order dated November 1, 1974, passed by E.K. Moidu J., the Presiding Officer of the National Tribunal at Calcutta (being the Respondent No. 1 herein) refusing to entertain an application under Rule 28 of The Industrial Disputes (Central) Rules, 1957, the refusal of the Government of India, as communicated by the letter dated September 22, 1973, to constitute a National Tribunal under the provisions of the Industrial Disputes Act, 1947, to hear such application and also an order of reference dated April 4, 1974, whereby the Government of West Bengal had referred certain matters to the Second Labour Court of West Bengal for adjudication.

2. The facts of this case, so far as relevant for the purpose of this case, are set out hereinbelow:

The Petitioner is a company incorporated under the provisions of the Indian Companies Act. The Petitioner is the proprietor of a newspaper known as The Statesman which is published in Calcutta and Delhi. The Petitioner has its offices, inter alia, at Calcutta, Delhi, Bombay and Madras. The employees of the Petitioner include persons who are working journalists within the meaning of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the 1955 Act) and persons who are workmen within the meaning of the Industrial Disputes Act, 1947 (hereinafter referred to as the 1947 Act). According to the Petitioner the Respondents Nos. 8, 9, 10, 11 and 12 herein are and at all material times had been employed by the Petitioner. According to the Petitioner, these Respondents are employed in the process department and are called Process Artists. It may be pointed out that, according to the Respondents Nos. 8, 9, 11 and 12, the Respondent No. 10 is not at all employed in the process department as process artist. By a notification dated November 12, 1963, the Central Government constituted a Wage Board u/s 9 of the 1955 Act for the purpose of enabling the Central Government to fix or revise rates of wages in respect of working journalists (hereinafter referred to as the Journalists Wage Board). On February 25, 1964, the Central Government set up another Wage Board so far as the non-journalists employees are concerned (hereinafter referred to as the Non-Journalists Wage Board). It is to be pointed out that the Non-Journalists Wage Board was not constituted under any Statute. It is alleged by the Petitioners that during the pendency of the proceedings before the Non-Journalists Wage Board, by agreement made on April 21, 1964 and on May 29, 1964, purported settlements were arrived at by the Petitioners with the Statesman Clerical Staff Union and the Statesman Employees' Union for payment of interim relief. On December 12, 1964, the Non-Journalists, Wage Board made recommendations for interim relief for non-journalist employees. In or about the middle of the year 1967 the Journalists Wage Board made its recommendations. In exercise of powers conferred by Section 12 of the 1955 Act, on October 27, 1967, the Central Government made an order in terms of the recommendations of the Journalists Wage Board. As a result of the same every working journalist employed by the Petitioner became entitled to wages at a rate not less than the rates specified in the said recommendations. The recommendations of the Journalists Wage Board so far as relevant for the purpose of this case are set out hereinbelow:

#### Chapter IV Recommendations

##### Grouping of Working Journalists:

4.24 (I). Full Time Employees--(a) In daily newspapers Glass I, Class II and Class III:

Class III : Reporter, Sub-Editor, CorRespondent, News Photographer, Calligraphist, Artists, Librarians and the Assistants and all working journalists other than those mentioned under any other group unless placed higher by the establishment.

## Remuneration

4.27. Wages, Scales and Grades--Working journalists of different groups employed in different classes of newspapers and news-agencies should be paid basic pay per mensem in accordance with the following scales:

Applicable in Case of Daily Newspapers and News Agencies

Class Group of employees Scale Years

I Rs. 200 lakhs and above 4.32. Fitment III Rs. 400-32-560-48-800-75-1250 16 years

6. A working journalist has to exercise his option for the new scale of pay within six months from the date of publication of the Government order on these recommendations.

Schedule I Section I--Newspapers

Group III

"Artist" is a person who prepares for publication "drawing, layouts, maps, graphs or other similar embellishments, illustrations of any kind, or creative Article He may do some or all of these functions. "Calligraphist" is an artist who performs journalistic work and also calligraph matters.

3. According to the Petitioner, the said recommendations of the Journalists Wage Board had no application to process artists who are not artists within the meaning of the said recommendations, nor working journalists nor journalists at all. It is further alleged that the Respondents Nos. 8 to 12 did not make any claim to be entitled to wages under the said recommendations until the end of 1971 and they did not exercise any option under para. 4.32(6) within the time fixed therein or at all. Thereafter, the Non-Journalists Wage Board made its recommendations and submitted its report which was accepted by the Central Government on November 18, 1967. This is denied and disputed by these Respondents. It is alleged by the Petitioner that after the publication of the recommendations of the Non-Journalists Wage Board, disputes arose between the Petitioner and other newspaper establishments and their respective employees with regard to the implementation thereof. It was further alleged by the Petitioner that there was a threat of strike to be announced on April 23, 1968. It is alleged by the Petitioner that the Petitioner averted this strike in its own establishment at Calcutta by agreeing to certain terms in oral negotiations with the relevant Union of its employees. It is further alleged that thereafter by an agreement signed on April 23, 1968, by the President of the Indian and Eastern Newspaper Society as representing the employers and the President and General Secretary of the All India Newspaper Employees' Federation as representing the employees, the strike in other establishments was called off upon certain terms. Thereafter, two letters, one on May 13 and the other on June 21, 1968, were written on behalf of the artists to the Petitioner which I shall refer

to later. By an order dated September 17, 1968, the Central Government, in exercise of powers conferred by Section 7B and Sub-section (1A) of Section 10 of the 1947 Act, constituted a National Tribunal at Calcutta of which Banerjee J. was made the Presiding Officer and certain disputes specified therein were referred to the said National Tribunal for adjudication. A good deal of argument has been advanced regarding the scope of the said order and accordingly, I think it proper that the same should be set out herein:

Order New Delhi, the 17th September, 1968

S.O. 3385. Whereas the Central Government is of the opinion that an industrial dispute exists between the employers and workmen in the newspaper establishments mentioned in the Annexure, in respect of the implementation of the recommendations of the Wage Board for non-journalist employees as accepted by the Central Government by its Resolution No. WB--17(7)/67, dated the 18th November, 1967, in regard to the matters mentioned in the Schedule;

And whereas the said employers and their workmen agreed to settle the dispute amicably by negotiations on the basis that the employers would make an interim payment in addition to the existing emoluments of 70 per cent of the difference between the existing emoluments and the emoluments payable under the recommendations of the Wage Board for non-journalists aforesaid;

And whereas such negotiations failed and the workmen have been on strike since the 23rd of July, 1968;

And whereas the employers have since agreed to pay, in addition to the existing emoluments, 75 per cent of the difference between the existing emoluments and the emoluments payable under the Board's recommendations, to the workmen covered by the recommendations of the Wage Board from the date of resumption of work by the workmen and have further agreed to continue to pay the same up to the date when the Award on this reference becomes enforceable;

And whereas the employers have further agreed that in fitting the pay of workmen in the pay scales determined by the Award on this reference, the total emoluments payable to workmen in accordance with the agreement mentioned in the preceding paragraph (hereinafter referred to as the employers agreement) immediately before the date on which the Award on this" reference becomes enforceable will be detected;

And whereas the Central Government is of the opinion that the dispute involves questions of national importance and is also of such a nature that newspaper establishments situated in more than one state are likely to be interested in or affected by such dispute;

And whereas the Central Government is of the opinion that the dispute should be adjudicated by a National Tribunal;

Now, therefore, in exercise of powers conferred by Section 7B and Sub-section

(1A) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby constitutes a National Tribunal at Calcutta of which Shri Justice B.N. Banerjee shall be the Presiding Officer and refers the said dispute to the said National Tribunal for adjudication.

#### Schedule

(1) Whether the recommendations of the Wage Board for non-journalist employees as accepted by Government by its Resolution No. WB-17(7)/67 dated the 18th November, 1967, are unfair or reasonable and if so, what modifications are required therein to ensure a just and fair wage structure for the non-journalists, having due regard to the paying capacity of the respective newspaper establishments, the employers' agreement and the emoluments and employees engaged in comparable establishments;

(2) Whether any categories of non-journalists employees in the newspaper establishments mentioned in the Annexure stand excluded from the recommendation of the Wage Board and if so, which those categories are and what the wage structure for such categories should be;

(3) Whether according to the recommendations of the Wage Board for non-journalists employees as accepted by Government by its Resolution No. WB-17(7)/67 dated the 18th November, 1967, the Free Press Journal, Bombay, is to be placed in Class III and if not, what its classification should be.

#### Annexure

(1) The Statesman--Calcutta and New Delhi

(2) The Indian Press--Bombay and New Delhi

(3) The Free Press Journal--Bombay

(4) The Hindusthan Times--New Delhi

(5) The Hindusthan Standard--Calcutta

(6) The Ananda Bazar Patrika--Calcutta

4. On October 4, 1968, the process artists of the Petitioners again wrote a letter to the Petitioner making their claims. On July 15, 1970, Banerjee J. made his Award which was published in the Gazette of India on August 3, 1970, pursuant to Section 17 of the 1947 Act. By virtue of Section 17A of the 1957 Act the said Award came into operation and became enforceable with effect from September 3, 1970. It is alleged that, thereafter, there were certain disputes regarding the implementation of the Award of the National Tribunal. It is alleged that by a letter dated December 30, 1970, The Statesman Employees Union agreed to drop the case of the process artists. On December 31, 1970, a memorandum of settlement was entered into between the company and The Statesman Employees Union regarding the dispute relating to the implementation of the Award of the National Tribunal. It is alleged that the said Union dropped its

demand regarding the process artists. On or about March 15, 1971, the Petitioner purported to make an application before the National Tribunal at Calcutta under Rule 28 of the Industrial Disputes (Central) Rules, 1957. (hereinafter referred to as the 1957 Rules). This application was moved before Banerjee J. describing him as the Presiding Officer of the National Tribunal, Calcutta. According to the Petitioner, this application was made on the following basis. At the hearing of the said disputes before the National Tribunal the Petitioner's workmen filed before the Tribunal a chart purporting to set out under different columns the missing categories or designations, the groups in which they had respectively been put by the Petitioner and the groups demanded for them respectively by the workmen. The said chart was marked as Ex. "W" in the proceedings and reproduced in the Award. It is alleged by the Petitioner that in the said chart the process artists were not shown as having been put in any group by the Petitioner. According to the Petitioner, in fact, they had been put in the same groups as clerks being Groups V and VI of the Administrative staff. It is alleged that the workmen claimed that they be put in Group III of the Working Journalists Wage Board. It is alleged by the Petitioners that owing to an oversight the Petitioner failed to notice that the column in relation to its grouping of the said process artists had been left blank. Accordingly, the Petitioner alleges that the said Ex. "W" contained an accidental slip or omission in respect of process artists. It is further alleged by the Petitioner that in the said Ex. "W" blanks were also left in the column relating to the Petitioner's grouping opposite the designations of Advertisement Revisors, Job and Advertisement Readers, Plate Maker and Learner (Helper), which the Petitioner had in fact placed in various appropriate groups. It is alleged that the said Ex. W also contained accidental slips and omissions in respect of the said designations as well. The National Tribunal while making its Award relied on Ex. "W". It is alleged that as a result of the reference to Ex. "W" and the accidental slip or omission therein relating to process artists, it appeared that the Petitioner was silent with regard to group in which they should be placed although in fact, the Petitioner was not silent in this respect. It is alleged that upon such reading of the Award the process artists are to be placed in Group III of the Working Journalists Wage Board although such would not be in accordance with the intention of the Tribunal. It is alleged that the process artists have been put in Group III of the Working Journalists Wage Board as a result of an accidental slip or omission which occurred in Ex. "W" and was copied into the Award. Be that as it may, upon such application being made, Banerjee J. purporting to act as the Presiding Officer of the National Tribunal at Calcutta issued notice of the said application to the opposite parties directing them to file their opposition. It appears that certain parties, not being the Petitioner, had meanwhile preferred an appeal to the Supreme Court against the said Award. Accordingly, by an order dated May 24, 1971, Banerjee J., describing himself as Presiding Officer of the National Tribunal at Calcutta, directed that the said application be put up after disposal of the appeals then pending before the Supreme Court. According to the Petitioner, Banerjee J., who was the Presiding Officer of the National Tribunal at Calcutta, retired and the vacancy therein was

not filled. On December 23, 1971, a tripartite conciliation proceeding started as the Indian Journalists Association had espoused the cause of the 5 artists of the Process department on the basis that they were working journalists. By an order dated January 5, 1972, the Central Government appointed S.N. Bagchi J. as the Presiding Officer of the Central Government Industrial Tribunal at Calcutta u/s 8 of the 1947 Act in view of the vacancy caused. By a letter dated April 5, 1972, the Indian Journalists Association is alleged to have asked for a Labour Court specified by the Government of West Bengal for recovery of amounts claimed u/s 33C of the 1947 Act. On May 26, 1972, the Petitioner sought to make an application before the "National Tribunal at Calcutta" for fixing a date for early hearing of the said application under Rule 28 of the 1957 Rules. The said application was moved before S.N. Bagchi J. who by his order made on the same date and describing himself as the Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Calcutta, held that he had no jurisdiction to entertain and deal with the said application. It was observed by Bagchi J. that since Banerjee J. quitted the office of National Tribunal in connection with the said case, he had succeeded Banerjee J. only in the office of the Central Government Industrial Tribunal-cum-Labour Court but not in his office as National Tribunal in regard to the case of Statesman Ltd., Calcutta v. Their Workmen. He further observed that inasmuch as he was not declared by the Central Government to be the successor of Banerjee J. in regard to the National Tribunal that functioned in relation to that case, he could not assume any jurisdiction over that case till the Central Government declared him a National Tribunal in regard to such case as successor-in-office to Banerjee J. who was declared as National Tribunal by the Central Government in that case. However, he directed that copies of the applications together with the copies of the said order with a forwarding letter, making request to the Central Government for taking necessary action, be sent to the Central Government. Mr. Ghosh, the Solicitor of the Petitioner, was requested to keep in touch with the office and to get the information if and when the Government action is notified. It was further directed that Mr. Ghosh might then move the application before Bagchi J. provided he was declared by the Central Government a National Tribunal in the case of the Petitioner (sic) their workmen. By a letter dated May 9, 1973, the Indian Journalists Association again referred to the conciliation officer which was forwarded by the said officer to the Petitioner by his memorandum dated May 14, 1973. A reply was given to the same by the Petitioner on May 23, 1973. By a letter dated May 30, 1973, the Petitioner requested the Central Government to constitute a National Tribunal at Calcutta for the purpose of hearing the application of the Petitioner under Rule 28. By its letter dated September 22, 1973, the Central Government rejected the prayer of the Petitioner. The relevant portion of the said impugned letter is set out hereinbelow:

We are advised that having regard to the fact that the Award has become final long ago and considerable time has elapsed since the application was filed by the Management in March J 1971, it may not be possible to appoint fresh National

Industrial Tribunal for the purpose. It appears that the representatives of the employees concerned have already taken up their case in terms of the said Award with the State Industrial Relations Machinery. They may, therefore, if so advised, take necessary steps to contest the employees' claim at the State level.

5. By a letter dated September 24, 1973, the Assistant Secretary to the Government of West Bengal, Labour Department, requested the Petitioner to depute its representatives to participate in a discussion regarding the claim of the process artists. On April 4, 1974, the impugned order of reference was made by the Government of West Bengal referring the dispute regarding the claim of the five employees before the Second Labour Court. I shall set out the same hereunder:

Government of West Bengal Labour Department Order

Calcutta; the 4th April, 1974

Whereas the newspaper employees mentioned in the Schedule below, of the newspaper establishment styled as the Statesman Ltd., 4 Chowringhee Square, Calcutta-1, represented by the Indian Journalists Association, 249-B Bepin Behari Ganguly Street, Calcutta-12, have made applications to the State Government for the recovery of the sums noted against each in the said Schedule as the amounts due to them from their employer;

And whereas the Governor is satisfied that certain amounts are so due to the said newspaper employees;

And whereas a question has arisen as to the amounts due to the said newspaper employees;

Now, therefore, in exercise of the power conferred by Sub-section (2) of Section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), the Governor is pleased hereby to refer, on his own motion, the said question to the Second Labour Court constituted u/s 7 of the Industrial Disputes Act, 1947 (14 of 1947), by the Government of West Bengal, Labour Department, notification No. 1727-I.R.L.R./3A-/1/58, dated the 27th April, 1958.

The Schedule

Shri Jagannath Dutta -- Rs. 30,761-64

Shri Kamal Kumar Chatterjee -- Rs. 30,761-64

Shri Manick Lal Roy -- Rs. 26,004-18

Shri Bimal Kumar Ghose -- Rs. 23,478-12

Shri Phani Bhusan Roy Chowdhury -- Rs. 16,552-82

By order of the Governor, S.N. Roy Dy. Secy, to the Govt, of W.B.

No. 3341/2(3)-I.R.

Copy forwarded for information and necessary action to M/s. The Statesman Ltd., 4 Chowringhee Square, Calcutta-1. Calcutta, The 4th April, 1974.

S/- Assistant Secretary.

6. On June 4, 1974, these process artists filed their written statement before the Second Labour Court. On August 21, 1974, the Petitioner filed its written statement before the said Labour Court.

7. By an order dated July 30, 1974, a National Tribunal at Calcutta was constituted by the Central Government and Moidu J. was appointed as Presiding Officer thereof. On October 31, 1974, an application was made by the Petitioner before the National Tribunal at Calcutta for hearing of the application under Rule 28 of the 1957 Rules. This application was moved before Moidu J. By an order dated November 1, 1974, Moidu J. rejected the said application. The said order is set out hereinbelow:

This application dated 31.10.1974 was filed before the Tribunal by the Statesman Limited under Rule 28 of the Industrial Disputes (Central) Rules, 1957, alleging that certain correction of errors arising from an accidental omission in the Award may be made. Notices of this petition had not been sent to the, opposite party workmen.

The question is whether this Tribunal has any jurisdiction to entertain the application. The reference in the case was made as early as 17th September, 1968, by the Government of India and an award was made on 15.7.1970 by Mr. Justice B.N. Banerjee, who was appointed a National Tribunal u/s 7B read with Sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947, for the adjudication of a specific dispute which arose between the parties. The notification was published in the Gazette extra-ordinary dated 17th September, 1968. On the basis of the reference Mr. Justice Banerjee made the Award on 15.7.1970 and it was duly published in the Gazette extra-ordinary on 3rd August 1970 u/s 17 of the Act. The Government did not take any further steps as required by Section 17A of the Act and the award was therefore conclusive. Mr. Justice Banerjee was specifically mentioned as the National Tribunal in the order of appointment which was made in respect of the dispute under the Gazette Notification dated 17.9.1968. That appointment was u/s 7B of the Act and the appointment was "ad hoc" for a particular dispute and it was not a general appointment as required by Section 8 of the Act. Once the "ad hoc" purpose is finalised, this Tribunal as National Tribunal constituted u/s 8 of the Act has no jurisdiction to entertain any application unless the Tribunal is over again appointed as the National Tribunal u/s 7B for the purpose of disposing of the application. The Central Government has not made any such appointment. Rule 28 of the Industrial Disputes (Central) Rules, therefore, cannot be invoked by the Petitioners in the circumstances of the case for the alleged connection of the mistake in the Award if any; I find this Tribunal has no jurisdiction.

In the result this petition is dismissed and the matter is closed. The application may be struck off from the pending list.

Sd/--

(Seal)

Presiding Officer

8. Under these circumstances, the present writ petition was moved. This Rule was issued on February 24, 1975 and by an ad interim order the operation of the said order-dated November 1, 1974 and all further proceedings before the said Labour Court was stayed. I ought to point out that it was stated before me that on June 23, 1975, a National Tribunal at Calcutta had been constituted under Sections 7B and 36A of the 1947 Act.

9. On behalf of the Petitioner Mr. Ginwalla submitted, firstly, that the order dated November 1, 1974, by Moidu J. was illegal inasmuch as it amounts to refusal to exercise his jurisdiction. It was contended by Mr. Ginwalla that Moidu J. was the Presiding Officer of the National Tribunal at Calcutta who had jurisdiction to hear the application under Rule 28 of the 1957 Rules. The Petitioner was entitled to make an application for correction of the error in the Award. He submitted that Banerjee J. did not become functus officio merely by making the Award. He still continued to be the Presiding Officer of the National Tribunal at Calcutta which would be borne out by the fact that he entertained the Petitioner's application under Rule 28 and directed notices to be issued. Thereafter, Banerjee J. ceased to be the Presiding Officer of the National Tribunal at Calcutta and there was a vacancy within the meaning of Section 8 of the 1947 Act and this was filled up by appointment of Moidu J. Accordingly, Moidu J. had jurisdiction to entertain the said application u/s 8 of the 1947 Act. In any event, he submitted that even if it was not a case of filling up a vacancy u/s 8 but constitution of a fresh Tribunal u/s 7B of the 1947 Act, that did not make any difference. In any view of the matter, Moidu J. had and has the jurisdiction to entertain the said application.

10. Regarding the order of the Central Government dated September 2, 1973, rejecting the request of the Petitioner to appoint a National Tribunal to hear the said application under Rule 28, Mr. Ginwalla submitted that it was obligatory on the part of the Central Government to make such appointment having regard to Section 8 of the 1947 Act. He submitted that it was a case of "vacancy" within the meaning of Section 8 of the 1947 Act. He submitted that after the Award was made, application under Rule 28 was filed before the National Tribunal at Calcutta of which Banerjee J. was the Presiding Officer and the said application was entertained and notices were issued by him. This application was pending before him which he did not dispose of when he ceased to be the Presiding Officer and accordingly, there was a vacancy within the meaning of Section 8 of the 1947 Act. He further submitted that in case of such a vacancy the Central Government had no option in the matter and was bound to fill up the vacancy. He submitted that the question of any discretion of the Government in respect of

filling up the vacancy did not arise in view of the use of the expression "shall" in Section 8. In any event, he submitted that even if it could be said that the Central Government had any discretion in the matter, it could not be said that such discretion had been properly exercised in the facts of this case. He submitted that the order of the Central Government refusing to make such appointment itself would show that the Central Government had not passed the order bona fide. On the other hand, it had taken into consideration certain matters which are extraneous in nature. He submitted that the considerations which influenced the Central Government in making the said order were neither relevant nor proper. In this connection Mr. Ginwalla relied on a decision of the Supreme Court in the case of Hochtief Gammon Vs. State of Orissa and Others, .

11. Regarding the order of reference of the State Government u/s 17(2) of the 1955 Act to the Second Labour Court, being order dated April 4, 1974, Mr. Ginwalla submitted that the said reference was bad for four reasons. Firstly, he submitted that these Respondents Nos. 8 to 12 were not working journalists within the meaning of 1955 Act. Secondly, these Respondents are not entitled to agitate this question before the Labour Court having regard to the fact that they had by their act and conduct estopped themselves from agitating this question. Thirdly, he submitted that such a reference u/s 17(2) of the 1955 Act could be made if any amount was due under the 1955 Act. Whatever amount is due to them was not under the 1955" Act, Fourthly, he submitted that in this particular case no option was exercised by the Respondents Nos. 8 to 12 as contemplated by the Working Journalists Wage Board recommendations and accordingly, these Respondents were not entitled to any benefit under the same.

12. On behalf of the Respondents three sets of arguments were advanced. Mr. D.N. Das made his submissions on behalf of the Central Government. Mr. Parbati Prasanna Ghosh made his submissions on behalf of the State Government and Mr. Naranarayan Gooptu made his submissions on behalf of the Respondents Nos. 8 to 10 and 12 and the added Respondent, Indian Journalists Association. The sum and substance of their submissions before me are as follows. Regarding the order of Moidu J. in refusing to entertain the application of the Petitioner, it was submitted that Moidu J. had no jurisdiction to entertain such application. It was submitted, firstly, that Rule 28 could not be invoked because the said Rules applied only to the cases set out under Rule 1(2). This is not such a case. In any event, it was submitted that Moidu J. was not the proper person to entertain such application. In this context reference was made to the affidavit of one Krisan Kumar Sharma affirmed on October 1, 1975. It was submitted that Moidu J. was appointed as the Presiding Officer of the National Tribunal at Calcutta only in connection with a specific dispute. Accordingly, he could not entertain any other dispute or any application relating to any other dispute or award. In this connection it was also submitted that he was not appointed in respect of the dispute between the Petitioner and its workmen or to hear any application in connection thereof. It was also disputed that his appointment was on a vacancy u/s 8. It was submitted that Banerjee J. became functus officio after making his

Award and or at least when the Award became enforceable u/s 17A of the 1947 Act. Therefore it could not be said that any matter was pending in connection with the industrial dispute which was referred to Banerjee J. as the Presiding Officer of the National Tribunal.

13. Regarding the refusal of the Government to appoint a Tribunal it was submitted that there was no question of any vacancy for reasons already stated. Accordingly, Section 8 of 1947 Act has no application. It was a question of appointment of a Tribunal u/s 7B of the 1947 Act. In any event, it was submitted that even if Section 8 was attracted in the present case, the Central Government had a discretion on the question of filling up of the vacancy. It was submitted that although the word used in Section 8 was "shall" it must be read as "may". In any event, it was submitted that even it was mandatory the Government had a discretion. Originally, the National Tribunal was appointed u/s 7B read with Section 10(1A) of the 1947 Act and accordingly, similar considerations would apply when the question of filling up of the vacancy arises and accordingly, the same questions and considerations may be taken into consideration by the Government. If the facts do not disclose such a state of affair then no appointment need be made. If it was a question of appointment of a fresh Tribunal u/s 7B, then it was clearly a matter of discretion on the part of the Central Government. The Central Government has given its reasons why it did not consider it advisable to appoint any such Tribunal. There is no question of the order being mala fide or any extraneous matters taken into consideration.

14. Regarding the order of reference dated April 4, 1974, by the State Government u/s 17(2) of the 1955 Act, it was contended on behalf of the Respondents that this was a matter entirely for the Tribunal to consider. If necessary, this can be taken up as and by way of preliminary point. It was submitted that though it was a question of jurisdictional fact, this Court could not at this stage go into an investigation of the same having regard to the very serious dispute regarding the same. On the merits also the correctness of the contentions of the Petitioner was very much challenged by the Respondents.

15. I shall first set out the relevant provision of the relevant Acts and Rules. The relevant provisions of the 1947 Act are set out as follows:

#### Section 7B. National Tribunals.

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes, which in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishment situated in more than one State are likely to be interested in, or effected by such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3).....

(4).....

Section 8. Filling of vacancies. If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then, in the case of National Tribunal, the Central Government and in any other case, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.

Section 10(1A). Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to the dispute, at any time, by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute whether it relates to any matter specified in the Second Schedule or the Third Schedule to a National Tribunal for adjudication.

Section 17. Publication of reports and awards.

(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of Section 17A the award published under Sub-section (1) shall be final and Shall not be called in question by any Court in any manner whatsoever.

Section 17A. Commencement of the award.

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication u/s 17.

Provided that.....

(2).....

(3).....

(4) Subject to the provisions of Sub-section (1) and Sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it

shall come into operation on the date when the award becomes enforceable under Sub-section (1) or Sub-section (3) as the case may be.

16. Rule 28 of the Industrial Disputes (Central) Rules, 1957, provides as follows:

Rule 28. Correction of errors. The Labour Court Tribunal, National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

17. The provisions of the said 1955 Act so far as relevant for the purpose of the present case are set out hereinbelow:

Section 2(f). "Working journalist" means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment and includes an editor, a leader-writer, news-editor sub-editor, feature-writer, copy-tester, reporter, corRespondent, cartoonist, news-photographer and proof-reader, but does not include any such person who--

- (i) is employed mainly in a managerial or administrative capacity, or,
- (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

Section 8. Fixation or revision of rates of wages.

(1) The Central Government may, in the manner hereinafter provided

- (a) fix rates of wages in respect of working journalist;
- (b) revise from time to time, at such intervals as it may think fit, the rate of wages fixed under this Section or specified in the order made u/s 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1959).

(2) The rates of wages may be fixed or revised by the Central Government in respect of working journalist for time work and for piece-work.

18. Section 10 of the 1955 Act makes provisions for the Board to make recommendations, as it thinks fit, to the Central Government for the fixation or revision of rates of wages in respect of working journalists after an enquiry in the manner laid down therein. Section 10 specifies the powers and procedures of the Board. Section 12 provides that as soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the said recommendations or subject to such modifications, if any, as it thinks fit, being modifications which in the opinion of the Central Government, do not effect important alterations in the character of the recommendations. Every order made by the Central Government under the said Section is to be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order. Section 13 provides that on the coming into operation of an order of the

Central Government u/s 12 every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order. Section 17(2) of the 1955 Act, under which the impugned reference has been made by the State Government, in the present case, is to the following effect:

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement "of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or Law.

19. I shall first deal with the question as to whether the refusal to exercise jurisdiction by Moidu J. was legal and proper. For the purpose of deciding the same, it is strictly not necessary to consider the question as to whether Banerjee J. became *functus officio* or not, after his Award became enforceable under the 1947 Act. It is also not strictly necessary to decide whether there was a vacancy within the meaning of Section 8 of the 1947 Act when Banerjee J. ceased to function. However, I have considered the same hereafter in connection with the other submission of Mr. Ginwalla. Assuming that Banerjee J. did not become *functus officio* after the Award became enforceable, assuming even that subsequently there was a vacancy when Banerjee J. ceased to function, the question which still remains is whether Moidu J. was entitled to hear the said application under Rule 28. It is clear from the relevant order dated July 30, 1974, that the appointment of Moidu J. was made u/s 7B of the 1947 Act as and by way of constitution of a new Tribunal and not u/s 8 of the 1947 Act as and by way of filling up of a vacancy in respect of an earlier constituted Tribunal. The order dated July. 3, 1974, is clear on this point. Accordingly, Moidu J. could not have entertained the application on the basis that it was a pending application in the old Tribunal in respect of which his appointment has been made by way of filling up of a vacancy.

20. The next question is whether even as a Presiding Officer of a newly constituted Tribunal u/s 7B read with Section 10(1A) of the 1947 Act, Moidu J. could entertain the application. The order dated July 30, 1974, does not confer the power on the Moidu National Tribunal to entertain such application. Accordingly, it had no jurisdiction to entertain the same. Moreover, it appears that the Moidu National Tribunal was constituted for some other specific purpose as mentioned hereinafter. By an order dated October 17, 1967, the Central Government constituted a National Tribunal at Calcutta of which Shri S.K. Sen was made the Presiding Officer. The said National Tribunal was constituted inasmuch as in the opinion of the Central Government an industrial dispute existed between the employers in respect of Hindusthan Machine Tools I and

Hindusthan Machine Tools II, Bangalore, Hindusthan Machine Tools IV, Malamaseri, Kerala and their workmen in respect of the matters specified in Schedule II thereof. The said disputes were referred to the said National Tribunal for adjudication and Hindusthan Machine Tools (Pinjore) and Hindusthan Machine Tools at Hyderabad were included in that reference. It appears that the parties involved in the disputes, that is, Hindusthan Machine Tools and their workmen filed a writ petition in the High Court at Karnataka in addition to an appeal preferred before the Supreme Court. It further appears that on March 14, 1974, the High Court at Karnataka had passed an order in the said writ petition, remanding the matter to the National Tribunal at Calcutta for; fresh hearing. Accordingly, Moidu J., who was at the relevant time the Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court at Calcutta (and not of any National Tribunal), wrote a letter dated June 7, 1974, to the relevant Ministry in the Central Government stating that he could not take up the said dispute for fresh hearing in view of the fact that he had not been declared as the Presiding Officer the National Tribunal at Calcutta by the Central Government. Accordingly, he requested the Central Government to look into this matter and issue necessary Government order appointing him as the Presiding Officer, National Tribunal, at Calcutta. It appears that pursuant to that letter of Moidu J. by an order dated July 30, 1974, the Government of India constituted a National Industrial Tribunal with headquarters at Calcutta and appointed Moidu J. as the Presiding Officer of the said Tribunal. Such appointment was made u/s 7B of the 1947 Act. From the above it is clear that Moidu J. I was appointed as the Presiding Officer of the National Tribunal at Calcutta only with: a specific purpose and to adjudicate upon a specific dispute, that is, the disputes between the Hindustan Machine Tools in their different establishments and their workmen in view of the order of remand by the High Court of Karnataka. It was not a National Tribunal at large. Accordingly, Moidu J. rightly held that he had no jurisdiction to entertain the said application of the Petitioner under Rule 28 of the 1957 Rules which was in connection with some other dispute which was not referred to him. From the aforesaid it would also be clear that the appointment of Moidu J. was not to any vacancy. At the relevant time there was no National Tribunal at Calcutta. There was no question of any vacancy. It was a case of fresh constitution and a fresh appointment for a specific purpose. Accordingly, I\*reject this contention of Mr. Ginwalla. I hold that the decision and order of Moidu J. refusing to entertain the application of the Petitioner under Rule 28 of the 1957 Rules was legal, valid and proper.

21. Next, I shall examine the validity of the Central Government's decision and order refusing to appoint a National Tribunal for the hearing of the application of the Petitioner under Rule 28 of the 1957 Rules. The first question is whether Section 7B or Section 8 of the 1947 Act applied in the case. To put it otherwise, was it a question of filling up of a vacancy as urged by the Petitioner or was it a question of appointment of a fresh Tribunal as urged by the Respondents? In this respect the relevant order relating to the constitution of the National Tribunal at

Calcutta with B.N. Banerjee J. as its Presiding Officer requires a close examination. By this order dated September 17, 1968, the Central Government constituted a National Tribunal at Calcutta of which Banerjee J. was made the Presiding Officer. In this context, it should be kept in mind, as would appear from Section 7B of the 1947 Act itself, these National Tribunals are one-man Tribunals. Apart from the Presiding Officer there is no other member. A close examination of this order of reference dated September 17, 1968, with its preamble, discloses the scope of such constitution and appointment. From this order it is clear that such constitution and appointment was made in this case for a certain specific purpose. This Tribunal was set up for the adjudication of certain disputes referred to therein. It may be that in certain cases certain standing or permanent Tribunals may be set up and from time to time certain disputes may be referred to them for adjudication. In this context, reference may also be made to a decision of Madhya Bharat High Court in the case of Manghazam and Co. v. K.B. Kher AIR 1956 M.B. 183. In such a case the particular Tribunal may be there to take up one dispute after another as and when the same may be referred to them by the appropriate Government. It may have been open for the Central Government to constitute a standing or permanent National Tribunal for adjudication of disputes contemplated by Section 7B read with Section 10(1A) of the 1947 Act. Thereafter, certain disputes of this nature could have been referred to the same from time to time by separate and different orders. But this was not so done in the present case. In this particular case the National Tribunal constituted was not of a general nature and it was not a standing National Tribunal. A specific National Tribunal with Banerjee J. as its Presiding Officer was constituted for adjudication of some specific disputes. This Tribunal made its Award on July 15, 1970, which was published in the Gazette on August 3, 1970. In view of the provisions of Sub-section (2) of Section 17, upon such publication in the Gazette, subject to the provisions of Section 17A, the Award became final and could not be called in question by any Court in any manner whatsoever. This Award became enforceable with effect from September 3, 1970, in view of the provisions of Sub-section (1) of Section 17A of the 1947 Act. Under Sub-section (4) of Section 17A this Award came into operation when it became enforceable. When the Award came into operation and became enforceable (if not earlier when it was published), then the disputes for which this Tribunal was constituted ceased to exist. It can be said that these disputes merged into the Award. Under these circumstances, if not from the date of publication of the Award u/s 17, at least from the date when this Award became enforceable u/s 17A, that is, September 3, 1970, the said Tribunal ceased to exist and the Presiding Officer thereof became functus officio. Thereafter, there was nothing left for this Tribunal to do. It was constituted for adjudication of certain specified disputes. It has adjudicated upon those disputes and therefore, has ceased to function. It cannot exist indefinitely for adjudication of some other dispute which was not referred to it. It cannot exist in anticipation (or apprehension) of any application which may be made in future in connection with its Award. Accordingly, when this application under Rule 28 was made before the so-called National Tribunal at

Calcutta which was entertained by B.N. Banerjee J., he was no longer the National Tribunal and was not entitled to entertain such application or issue such a notice. I am informed that at that time Banerjee J. was the Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court at Calcutta which was in the same building. That is how the mistake might have been made. However, nothing was produced before me, apart from the order of Banerjee J. and the notice to show cause to show that Banerjee J. was the Presiding Officer of any National Tribunal at the relevant time though it has been specifically alleged in the affidavit affirmed by Sri K.K. Sharma on behalf of the Central Government that on March 11, 1971, that is, when such application was made, the National Tribunal at Calcutta was not existing and that after the said Award the said National Tribunal ceased to exist.

22. In the case of Rifle Factory Co-operative Society Ltd. (Stores Branch) Vs. Fourth Industrial Tribunal and Others, and cited by Mr. Das it was held by P.B. Mukharji J. that the Industrial Tribunal was not a Court of general and residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the order of reference. It was observed that the Industrial Tribunal was an ad hoc Tribunal with ad hoc jurisdiction to determine specified industrial dispute. These observations were approved by a Division Bench of this Court in the case of The Indian Iron and Steel Co. Ltd. and Another Vs. Treogi Nath and Others, which was upheld by Supreme Court on appeal in the case of Treogi Nath Vs. The Indian Iron and Steel Co. Ltd., .

23. Accordingly, in the present case, in my opinion it was not a case of filling up of a vacancy u/s 8 but a question of appointment of a fresh National Tribunal u/s 7B of the 1947 Act.

24. If it was not a case of filling up of a vacancy, admittedly the Central Government had discretion as to whether a National Tribunal should be constituted or not, more so, having regard to the language of Section 7B. u/s 7B such a Tribunal can be constituted if the Central Government is of the opinion that any question, of national importance is involved or questions of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such dispute. In this particular case, the Central Government has given its reasons as to why such prayer for the constitution of the Tribunal was rejected. In my opinion, the reason show's a bona fide exercise of power and it was not a case of taking any extraneous matters into consideration. The application was made to the Central Government on May 30, 1973, that is, about three years after the Award became enforceable. It also further appears that at the relevant time the matter was already pending before the State Industrial Relation Machinery. If under these circumstances the Central Government was of the opinion that it was not necessary to constitute a fresh Tribunal for the purpose of entertaining Such application, it cannot be said that the said power was not exercised bona fide of that any extraneous matter was taken into consideration.

25. In the case of Hochtief Gamman Supra, cited by Mr. Ginwalla, the Appellant before the Supreme Court applied to the appropriate Government to modify the earlier reference to the Industrial Tribunal by adding a party and an additional issue to the reference. This was made on the basis of an observation made in an earlier judgment arising out of such reference. This prayer was rejected by the Government Stating that the Government did not find any material to include such a party in the said case. Their Lordships of the Supreme Court observed that it was apparent from the Government's reply that they had not applied their mind to the facts placed before them. It was held that the party sought to be added was a necessary or at least a proper party. This decision does not help the matter before us. The facts of the present case are completely different. The impugned order in the present case does not show that there was any non-application of mind on the part of the Central Government. On the other hand, it is well-settled, that considerations of expediency cannot be excluded when the Government considers whether or not it should exercise its power to make a reference : The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, .

26. Accordingly, I reject this contention of Mr. Ginwalla. I hold that the decision of the Central Government as conveyed by the letter dated September 22, 1973, was valid, proper and legal.

27. Even if it is assumed that the National Tribunal of which Banerjee J. was the Presiding Officer did not become functus officio but continued to exist after the said Award was made or became enforceable, that does not help the Petitioner. That would only make, the filing of the application before and the issue of notice by Banerjee J. valid and legal but nothing else. But in that event, making an application before Moidu J. for hearing of the said application was not legal or proper. It should have been moved before Banerjee J. as the Tribunal of which he is the Presiding Officer and which is supposed to be still existing. In this connection it is to be remembered that under Rule 28 of the 1957 Rules it is clear that such corrections can be made only by the National Tribunal which had made the Award. It has not been shown as to how the Banerjee Tribunal, which is supposed to have been in existence when the application was made before it, was not in existence at the time when such application was moved before Moidu J. Accordingly, the refusal of Moidu J. to entertain such application was correct, whether the reason given by him were correct or not. Moreover, if the Banerjee Tribunal did not cease to exist after the Award was made and published and if the application was properly made before this Tribunal, then the application of the Petitioner before the Central Government for appointment of a Tribunal was misconceived whether it was an application for a fresh Tribunal u/s 7B or filling up of a vacancy u/s 8. If it was an application u/s 7B, it was misconceived, because such application was to be heard by the Tribunal which had made the Award and which was still existing. If it was an application u/s 8, it was misconceived for the same reasons. It has not been shown how and when the alleged vacancy had occurred though the Tribunal was stated to be in existence

even after the Award was made and published. In any view of the matter, whether the Tribunal presided over by Banerjee J. ceased to function and became functus officio after the Award was made and published or not, the application of the Petitioner before the Central Government was misconceived. Similarly, the application before Moidu J. was also misconceived.

28. In view of my finding as above, it is not necessary to decide whether in the case of a filling up of a vacancy u/s 8 the Central Government had any discretion in the matter or whether it was bound to fill up such vacancy irrespective of the questions of necessity or propriety of the same. It is also not necessary to decide the question as raised by Mr. Das, that Rule 28 cannot be invoked by the Petitioner having regard to the language of Rule 1(2) of the 1957 Rules. It is also not necessary to decide the question whether there was any "clerical mistake or error arising from any accidental slip or omission" in the Award of Banerjee J. within the meaning of Rule 28 of the 1957 Rules.

29. The next question is regarding the validity of the order of reference dated April 4, 1974, made by the State Government u/s 17(2) of the 1955 Act. The main contention on behalf of the Petitioner is that the Respondents Nos. 8 to 12 are not working journalists and in any event, they are estopped from contending that they are working journalists or artists. In my opinion, these are not pure questions of law. At the most they are mixed questions of fact and law. According to the Petitioner, these Respondents are employed by the Petitioner in its process department and are called process artists. According to the Petitioner, printing blocks for printing of photographs and other matters, not consisting of lettering of standard types, are prepared in the process department and the principal or essential work of process artists is to make necessary technical alterations to photographic or other material so as to render it suitable for printing in a newspaper, as for instance, making the background of a photograph uniform by blacking out or otherwise erasing irrelevant matter appearing in such background. According to the Petitioner, although they are called process artists, such work has no element whatsoever of creative art and is of the nature of routine semi-skilled manual or technical work and is akin to clerical work. It is alleged that the terms and conditions of the employment of process artists including the said Respondents have at all material times been and still are the same as those of the clerical staff of the Petitioner. It is further alleged that the process artists are not journalists at all or working journalists within the meaning of the 1955 Act and have never even claimed to be such prior to the end of 1971. The case of the Respondents Nos. 8, 9, 10 and 12 as would appear from the affidavit of one Jagannath Dutta and others affirmed on May 26, 1975, is as follows : It is admitted that the Respondents are employed by the Petitioner and are called process artists. But with regard to the Respondent No. 11 it is denied that he has been or could be employed by the Petitioner in its process department or could be called a process artist as alleged or at all. It is alleged that the Respondent No. 11 has been set up by the Petitioner with an ulterior motive to obtain his support at the time of hearing although the said Respondent

No. 11 was not at all a necessary party inasmuch as he had never been connected with the proceedings. It is denied that the Respondents Nos. 8, 9, 10 and 12 though called process artists, such work, as alleged, has no element whatsoever of creative art or that it was of the nature of alleged routine or semi-skilled or manual or technical work or is akin to clerical work as alleged or at all. It is stated that the process artists of the Petitioner, including the said Respondent herein, who has been employed by the Petitioner, possess special talents in the field of art and they have undergone special training in the recognised Art Colleges to learn their work. It is stated that the work of these artists were with colours and brushes on papers and canvasses and have no similarity with the routine clerical job as sought to be made in the said paragraph. It is stated that in the Journalists Wage Board also, in the Award published on October 27, 1967, has included the said process artists within the category of journalists for the above reasons. It was further stated by those Respondents that in the Petitioner's pay roll book the process artists, including the Respondent herein, had always been described as artists for decades. The Petitioner without any proper reason or justification has not accorded proper facilities and/or emoluments to the said process artists which time and again the process artists have demanded from the Petitioner and the Journalists Wage Board also supported the view of the process artists. Description of the said process artists in the pay roll book of the Petitioner as artists proves that the management of the Petitioner had always accepted the special status of the process artists at all material times. It is also denied by them that the process artists are not journalists at all or working journalists within the meaning of the 1955 Act or that they have never even claimed to be such prior to the end of 1971 as alleged or at all. Sri Lalit Mohan Banerjee, General Secretary of the Indian Journalists Association, the added Respondent herein, in his affidavit affirmed on September 2, 1975, has stated similarly.

30. Therefore, it is clear that it has got to be decided whether the Respondents Nos. 8 to 12 are working journalists or not within the meaning of the 1955 Act and artists or not within the meaning of the recommendations of the Journalists Wage Board. Facts relating to these questions are very much in dispute and it requires a detailed enquiry involving taking of evidence. Similarly, the question as to whether by their action and conduct these Respondents are estopped from contending that they are working journalists or artists or not, has also to be investigated. Leaving aside the question whether any question of any estoppel may arise in such a case, the question of estoppel is not certainly a pure question of law. Similarly, the question whether they have exercised option or not is very much in dispute. These may be jurisdictional facts, but in my opinion this Court in its writ jurisdiction and at this stage is not the proper forum to decide these questions. These questions cannot be satisfactorily dealt with merely on affidavits. These should, at the first instance, be decided by the Labour Court. Decisions on these questions depend upon the appreciation of evidence. In the case of *The Management of Express Newspapers Ltd. Vs.*

Workers and Staff Employed under it and Others, the Supreme Court observed as follows:

The true legal position in regard to the jurisdiction of the High Court to entertain the Appellant's petition even at the initial stage of the proceedings proposed to be taken before the Industrial Tribunal, is not in dispute. If the action taken by the Appellant is not a lockout but is a closure, bona fide and genuine, the dispute which the Respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout but the said action has adopted the disguise of a closure and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with. The Appellant contends that what it has done is a closure and so, the dispute in respect of it cannot be validly referred for adjudication by an Industrial Tribunal. There is no doubt that in law, the Appellant is entitled to move the High Court even at the initial stage and seek to satisfy it that the dispute is not an industrial dispute and so the Industrial Tribunal has no jurisdiction to embark upon the proposed enquiry.

There is also no doubt that the proceedings before the Industrial Tribunal are in the nature of quasi-judicial proceedings and in respect of them a writ of certiorari can issue in a proper case. If the Industrial Tribunal proceeds to assume jurisdiction over a non-industrial dispute, that can be successfully challenged before the High Court by a petition for an appropriate writ and the power of the High Court to issue an appropriate writ in that behalf cannot be questioned.

It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the Appellant is a closure or a lockout. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the Appellant amounts to a closure, there would be an end to the proceedings before the Tribunal so far as the main dispute is concerned. If, on the other hand, the finding is that the action of the Appellant amounts to a lockout, which has been disguised as a closure, then the Tribunal will be entitled to deal with the reference. The finding which the Tribunal may make on this preliminary issue is a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the Appellant that the Industrial Tribunal would have jurisdiction to deal with the merits of the dispute. This position is also not in dispute.

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...It is well-known that Industrial Courts are familiar with the nature of the problem raised by the preliminary issue between the parties in the present writ proceedings. In fact, Industrial Tribunals have been specially established in order

to deal with industrial disputes in different places. That is one consideration which is relevant. The other consideration which is equally material is that a question of this complicated character cannot be satisfactorily dealt with merely on affidavits.

The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be and is indeed not disputed. But, would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction. We wish to point out that in making those observations, we do not propose to lay down any fixed or inflexible rule whether or not even the preliminary facts should be tried by a High Court in a writ petition must naturally depend upon the nature of preliminary issue raised between the parties....

In the case of *The Tata Iron and Steel Co. Ltd. Vs. D.R. Singh*, it was held by the Supreme Court that the Tribunal should not refuse to consider a preliminary question raised, before it as to the applicability of Section 33(3) of the 1947 Act when an application has been made to that effect. Therefore, it is clear that in the present case it is open to the Petitioner to make an application before the Labour Court for a preliminary hearing on the question as to whether the Respondents Nos. 8 to. 12 are working journalists and artists within the meaning of the Working Journalists Wage Board recommendations and the 1955 Act or not and/or whether they are estopped or not as alleged and whether they have exercised the option or not. It was sought to be argued by Mr. Ginwalla at one stage that the nature of the dispute was such that it was not within the jurisdiction; of the Labour Court to go into the same. I am not inclined to accept such submission of Mr. Ginwalla. In my view, the scope of Section 17(2) of the 1955 Act is wide enough to enable the Labour Court to adjudicate upon all these questions. In this context, I may point out that the provisions of Section 17(2) of the 1955 Act is similar to if not wider than the provisions of Section 33C(2) of the 1947 Act. The said Section 33C has been the subject-matter of various decisions of the Supreme Court. In the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, it was held that the claim u/s 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may in some cases have to be preceded by an enquiry into the existence into the right and such an enquiry must be held to be incidental to the main

determination which has been assigned to the Labour Court by Section 33C(2). The contention of the Appellant in that case that in the case of Section 33C(2) the persons concerned must be a workman whose right to receive the benefit is not disputed by the company was rejected by the Supreme Court. It was further held that as Executing Court it was open to the Labour Court u/s 33C(2) to interpret the award or a settlement for the purpose of execution. In my opinion, the principles laid down in this case is still good law and the subsequent decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, cited by Mr. Ginwalla has not in any way made any modification of the same.

31. In view of my decision as above, I refrain from going into the merits of the respective submissions on the merits as I do not intend to make the enquiry myself. It would be for the Labour Court to go into all these questions raised on behalf of the Petitioner and decide the same in accordance with law. In the case of Daily Pratap v. Their Khatibs AIR 1972 S.C. 1877 cited by Mr. Gooptu, the question before the Supreme Court was whether khatibs (a) are artists, (b) perform journalistic work and (c) also calligraph matters within the meaning of the recommendations of the Journalists Wage Board. These questions were decided by the Labour Court on the basis of evidence produced before it both oral and documentary. Similar enquiry will be held by the Labour Court in the present case.

32. For the aforesaid reasons I reject this contention of Mr. Ginwalla. I hold that from the affidavit it is not open to this Court in this jurisdiction and at this stage to decide such questions and hold that such reference was made illegally or improperly. It would be for the Labour Court to decide the same at the first instance.

33. For the aforesaid reasons all the contentions raised in support of the Rule fail. Accordingly, I dismiss this application and discharge the Rule. All interim orders are vacated. No order as to costs. Operation of this order, so far as it relates to the proceedings arising out of the order of reference dated April 4, 1974, is stayed for a period of one week after the Christmas vacation.