
(1949) 08 MAD CK 0060
In the Madras High Court

The Kandan Textile Ltd.

APPELLANT

Vs

The Industrial Tribunal I and Others

RESPONDENT

Date of Decision : 26-08-1949

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c)

Citation : (1949) 2 MLJ 789

Hon'ble Judges : P.V. Rajamannar, C.J; Mack, J

Bench : Full Bench

Judgement

P.V. Rajamannar, C.J.—This application is made by the Kandan Textiles limited, for the issue of a writ of certiorari to call for the records in

the matter of the industrial dispute between the workers and the management of the Kandan Textiles, limited, before the Industrial Tribunal I,

Madras and the award therein, dated 23rd May, 1949 and to quash the same.

2. The applicant company is the proprietor of a small weaving mill located in "iruvottiyur, Madras, employing (60 looms and about 200 workers.

On 21st January, 1948, one R.M. Sundaram one of the workmen in the mill was dismissed by the management on the ground that he was

responsible for the loss of a flexible shaft. He made attempts through the Labour Conciliation Officer to get himself re-instated but did not succeed

in his attempt. On 23rd August, 1948, the boiler in the mills broke down and the mills were closed from 24th August, 1948, till nth October, 1948.

On the intervention of the Labour Authorities, 14 days wages were paid to practically all the workers. On 12th October, 1948, the mill reopened.

Most of the workmen who had been working in the mill on the date of the closure were taken in, but 48 of them were left out. The mills were not

working at their full strength of three shifts. On 28th October, 1948, the management put up a notice of having a third shift on and from 3rd

November, 1948. On 13th November, 1948, 21 of the workers who had been left out resumed duty. They were asked by the manager of the

mills to work on looms other than those which had been allotted to them prior to the closure of the mills, but they declined to do so, and thereupon

the manager asked them to leave the mills. A notice was put up at the mills informing the workers that their services were dispensed with as they

had refused to accept the allocation of looms made by the manager. On 20th November, 1948, seven more workers of whom one was a jobber

and the rest were weavers were called back to duty and new looms were allotted to the six weavers. They too declined to work on the new looms

and were dismissed. Six of the weavers who had been in service of the mills before the boiler broke down were not called back at all. Two of the

workmen who had been jobbers before the closure were entertained again not as jobbers but only as weavers.

3. There are in existence two rival unions of the workmen of the mills. The Kandan Textiles Labour Union, evidently sponsored by the

management, was formed in June, 1947 and it is common ground that the majority of the workmen are members of this union. On 17th March,

1948, this union made an application for registration under the Trade Union Act, but for reasons which need not be discussed here it was

registered only on 24th December, 1948. The other union is the Kandan Weaving Workers' Union. An application for the registration of this union

was made on 7th October, 1948, long after the application for registration made by the first union, but it was registered on 18th October, 1948.

4. It may be mentioned that Sundaram who had been dismissed in January, 1948, purports to be its secretary, and one Sreenivasan who is not a

workman of the mills, its president. As regards this latter union, the Tribunal has found that it is not known when exactly it was formed and no

particulars of its membership or of the election of the office bearers are available. The Tribunal was of the opinion that its members are fewer than

that of the other union. The capacity of this union to represent the general body of workers or any section of the workmen was questioned by the

applicant before the Tribunal.

5. The president of the union appears to have been addressing letters to the Commissioner of Labour from time to time, but it was admitted by its

counsel appearing before us that the union never addressed any communication to the management complaining against any action on their part. On

4th December, 1948 the president of this union addressed a letter to the Secretary to the Government (Ex. Y) giving a list of disputes existing

between the management and the workers of the mills and praying for a reference to a Tribunal under the Industrial Disputes Act (XIV of 1947).

On 8th December, 1948, the Government of Madras passed an order directing the Industrial Tribunal having its place of residence at Madras to

adjudicate on an industrial dispute between the workers and the management of the Kandan Textiles, Limited, in respect of 11 matters mentioned in

an annexure to the order. The material portion of the order is as follows:

The Commissioner of Labour, Madras, has reported that an Industrial Dispute has arisen between the workers and the managements of the

Kandan Textiles, Limited, Madras, in respect of the matters mentioned in the annexure, that the parties to the dispute are unable to arrive at an

amicable settlement and recommends that the dispute may be referred to the Industrial Tribunal Madras, for adjudication u/s 10(1)(c) of the

Industrial Disputes Act, 1947.

The annexure contained the following eleven items:

(1) Whether any retrenchment is necessary and if so how should the retrenchment be effected;

(2) Whether temporary workers who had put in more than six months service should be made permanent;

(3) Whether Badli system should be abolished;

(4) Whether the customary bonus has been paid, withheld and what bonus should be paid to the workers;

(5) What leave privileges, casual, sick and festival holidays should be given to the workers;

(6) Whether the 48 workers who are non-employed at present are entitled for their wages from 12-10-1948 till the date of employment;

(7) Whether the Union Secretary, Sri R. M. Sundaram, should be re-instated;

(8) Whether the Badli workers are entitled for the notice wages as per orders of the Commissioner of Labour.

(9) Whether the workers are entitled to the refund of their contribution of Rs. 2 each contributed towards the erection of the statue of Mahatmaji

within the company compound and annual celebrations as detailed in the petition dated 24th August, 1948, addressed to the Commissioner of

Labour;

(10) Whether the management is justified in departing from the usual practice and directing the weavers to change over looms;

(11) Whether the Workers' Union registered under the Trade Union Act should be recognised by the management of the Kandan Textiles, if so,

on what conditions.

The order made specific reference to two letters from the Commissioner of Labour, Madras, dated 29th October, 1948, and 2nd December,

1948, presumably containing the report of the Commissioner of Labour, Madras, mentioned in the text of the order.

6. In pursuance of this order the Industrial Tribunal after notice to the management, to the Kandan Weaving Workers' Union and the Kandan

Textiles Labour Union held an enquiry and made an award on 23rd May, 1949. On 2nd June, 1949, the Government declared that the said award

shall be binding on the management of the Kandan Textiles, Limited, Madras, and the workers employed therein and directed that the said award

shall come into operation on the 2nd June, 1949 and remain in operation for a period of one year. It is to quash this order that the present

application has been filed.

7. Before dealing with the grounds on which the applicant prays for this relief it is convenient to briefly dispose of a preliminary objection raised on

behalf of the respondents that a writ of certiorari cannot be issued in this case because the Government had u/s 15 of the Act declared the award

to be binding and it is not competent for this Court to issue a writ of certiorari against an Act of the Governor. This objection must be overruled on

the authority of the ruling in Srimath Deivasikamani Ponnambala Desikar Vs. The Board of Commissioners for Hindu Religious Endowments, .. In

that case the Madras Hindu Religious Endowments Board notified certain temples under Chapter VI-A of the Madras Hindu Religious

Endowments Act, 1926. In accordance with the decision of the Board, the Government declared the temples to be subject to the provisions of the

Chapter. It was contended that this Court could not issue a writ of certiorari to quash the order of the. Board, because of the bar contained in the provisions of Section 306 of the Government of India Act, 1935, but the contention was rejected.

8. Leach, C.J., observed as follows:

In the first place, the petitioner does not ask for the issue of a writ against the Government, but against the Board, which is no part of the

Government. In the second place, if the Board has abused its powers the Court has power to quash the Board's orders on which the notification is

based and, if the basis of the notification is illegal, the notification is illegal.

In view of this decision, the learned Advocate-General did not seriously press this objection as to the maintainability of this application.

9. The main grounds on which learned Counsel for the petitioner sought to have the award of the Tribunal quashed were:

(i) that there was no industrial dispute in existence between the employer and the workmen.

(ii) that the reference to the Tribunal made by the Government by their order of the 8th December, 1948, was invalid, because ex facie the

Government had before it no material to arrive at a conclusion that the matters mentioned in the annexure to the order were matters in dispute

between the workmen and the management.

10. In developing both these grounds, several interesting questions relating to the construction of the provisions of the Act were raised on which we

heard the arguments of the counsel on behalf of the petitioner and the contesting respondent, viz the Kandan Textiles Workers' Union and also the

learned Advocate-General who represented the Government. Many of these questions are res Integra.

11. We have no hesitation in holding that the petitioner must succeed on the second ground that the order of the Government referring to the

Tribunal eleven matters set out in the annexure to the order is bad. The order purports to have been passed in exercise of the power conferred by

Section 10(1)(c) of the Act which runs thus:

10. (1) If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing,-

* * * *

(c) refer the dispute to a Tribunal for adjudication.

Obviously, the Government before it makes an order under this provision must be satisfied that the industrial dispute which is being referred for

adjudication exists or is apprehended; and the Government should have material before it to form an opinion that an industrial dispute exists or is

apprehended. This position was conceded by the learned Advocate-General. On the face of the order it is made abundantly clear that the

Government passed the order on and accepting the recommendation made by the Commissioner of Labour and the reference to the two letters

from him indicates that the recommendation is contained in these two letters. It is now admitted before us by counsel for the contesting respondent

and by the learned Advocate-General that none of the eleven matters mentioned in the annexure to the order is to be found in the said two letters

of the Commissioner of Labour to the Government. The letter dated 29th October, 1948 (and the other letter, dated 2nd December, 1948, carries

us no further) refers to a dispute as to the principle of seniority not being accepted by the management in taking back the workers after the mills

reopened in October, 1948. This question of seniority is not admittedly one of the items of dispute set out in the annexure. Evidently what

happened was that the list of eleven matters contained in the letter addressed by the President of the Kandan Workers' Union to the Secretary to

the Government on 4th December, 1948, was copied verbatim as an annexure to the Government Order. It is not suggested--and it would be idle

to suggest--that the Government called for a report from the Commissioner of Labour to ascertain whether those matters were really in dispute and

that they acted on such report. The learned Advocate-General did not and could not--contend that simply because some individual or organization

addressed a communication to the Government saying that there was all industrial dispute between the employer and the workmen of a concern,

the Government would be justified in passing an order referring the matters to a Tribunal for adjudication without being satisfied on the material

placed before them that the disputes did exist or were apprehended. It is incumbent upon the Government to apply its mind to the relevant material

placed before it before deciding that an industrial dispute exists or is apprehended and making an order u/s 10(1) of the Act. With great respect I

agree with the following observations of the learned Judges who decided the case in Ramayya Pantulu v. Kutty and Rao (Engineer), Ltd. (1948) 1

M.L.J. 231.

When a notification is issued and a reference made to a Tribunal, the Government must have in mind some dispute that has actually happened or

one that is likely to arise from circumstances known to the Government. It seems to us, on a fair reading of section to that the Government must

have reason to believe that in a particular business a definite dispute is known to exist or is apprehended by reason of demands and discussions

taking place amongst the workers and management. It seems to us from the general purport of the Act, that a responsibility lay upon the

Government of considering the existence and the nature of a dispute and to exercise their mind and decide whether it is necessary to refer that

dispute to a Tribunal for in award.

Taking the present case, if the Government had considered the truth of the existence of a dispute and had exercised their mind on the material

placed before them, they would have certainly come to the conclusion that the items set out in the annexure to their order were not matters of

dispute, and there was no material before them that a dispute existed as to them. Most of these items had nothing to do with the case of the

dismissed and non-employed workmen. The fifth item is : What leave privileges, casual, sick and festival holidays, should be given to the workers ?

Now, there was nothing before the Government on which they could have decided that a dispute existed as regards these matters. In fact, at the

inquiry before the Tribunal the contesting respondent before us, namely, the Kandan Weaving Workers Union did not press items 3, 5, 8, 9 and

11. The management did not raise any dispute as regards item 2. In these circumstances I have no hesitation in holding that the reference made by

the Government in this case was neither competent nor valid.

12. Moreover, there is no evidence appearing on the face of the award from which j the conclusion can be drawn that an industrial dispute existed

on the date of the order of reference. It is true that one R.M. Sundaram was dismissed in January 1948, and other workmen were dismissed or

discharged in November, 1948, and some of the workmen who had been employed before the closure of the mills were not re-employed after the

mills reopened. But there is no clear evidence that there was a dispute between the management and the workers within the meaning of the Act.

There is no evidence that either the aggrieved workers or the other workers on their behalf ever made a demand on the management for re-

instatement and that the demand was refused by the employer. As pointed out in the judgment of the Federal Court in *Western India Automobile*

Association v. Industrial Tribunal, Bombay (1949) F.L.J. 154

Demand as to re-instatement may arise in several ways. It may be a demand of the workmen in service that unless the dismissed workmen are re-

instated, they will strike work. It may be a demand of the workmen on strike refusing to resume work unless persons victimised are put back in

service or it may be a demand of the dismissed employees themselves.

There is no evidence of a demand in any of these several ways. No doubt the president of the *Kandan Weaving Workers' Union* was addressing

letters to the Commissioner of Labour from time to time, but admittedly he never addressed any letter to the management. In the absence of any

definite particulars as to the membership of this union, and its representative character, and in the absence of anything to show that it was decided

by the workmen members of this union by resolution or otherwise to take up the cause of the aggrieved workmen and in the absence of evidence

to show that the aggrieved workmen put forward the president of this union as their representative and spokesman, it is impossible to hold in law

that an industrial dispute existed between the employer and the workmen to enable the Government to make an order u/s 10(1) of the Act. In one

place the Tribunal says that while this union cannot represent the majority of the workers-who are members of the *Kandan Textiles Labour Union*

who have no dispute with the management, it can represent Sundaram and other aggrieved workers, because, it is not denied that these 36

workers are members of the latter union. Surely, this is not a matter in the knowledge of the petitioner to expect a specific denial from him. If no

particulars were furnished even to the Tribunal as regards the membership of this union and its proceedings, it follows that the petitioner was not in

a position to make any assertion. In our opinion, it was incumbent on the union by production of the relevant records to positively establish the fact

that the union is entitled to represent and that it is, as a matter of fact,

representing these 36 aggrieved workers. The Tribunal has sought support for its conclusion from the provisions of Section 36(1) of the Act which provides that a workman, who is a party to an industrial dispute shall be entitled to be represented, in any proceedings under the Act by an officer of a registered trade union. This provision has nothing whatever to do with the question whether there is an industrial dispute within the meaning of the Act. We have only before us the letters addressed by the, president of the union who, as already mentioned, is not himself a workman in the mills, and there is nothing on record to show that he has been authorised by the resolution or other proceeding of the union to represent the workers of the mills or any section thereof. We are far from suggesting that the workmen who did not secure re-employment did not feel themselves aggrieved, but this circumstance alone cannot support a finding that an industrial dispute exists within the meaning of the Act. A dismissed workman may feel himself aggrieved but may make no-demand on the management, or after a demand and refusal may not pursue the matter further; in which case it would be wrong to say that an industrial dispute exists.

13. The application before us can be disposed of in favour of the petitioner on these findings of ours, namely, that the reference by Government was bad and that it is not established that there is a dispute between the employer and the workers, because the authority of the Weaving Workers' Union to represent any worker has not been proved to exist.

14. Mr. Thiruvengkatachariar, the learned advocate for the petitioner, has argued further that even assuming there is a dispute between the management and the 36 workers mentioned above such a dispute cannot be deemed to be an industrial dispute within the meaning of the Act.

According to his contention, before it can be held that an industrial dispute exists between the employer and the work men, it must be established

that there is a dispute between the employer and a majority of the workmen or the concerned section of the workmen as regards one of the

matters mentioned in the definition of "industrial dispute". If, A, a workman, is dismissed and he demands re-instatement and his demand is

refused by the employer, there may be an individual dispute between A and the employer but such a dispute cannot be called an industrial dispute,

unless the majority of the workers or a definite section of the workmen takes up his cause and makes it a common dispute. So his arguments ran.

Industrial dispute "" according to Section 2(k) of the Act means-

any dispute or difference between employers and employers. or between employers and work men, or between workmen and workmen, which is

connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Besides this definition, the following other provisions of the Act were also relied on by learned Counsel in support of his contention:

Section 10 (2) : 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 or Tribunal, the appropriate Government, if satisfied that the persons applying, represent the majority of each party, shall

make the reference accordingly.

18. A settlement arrived at in the course of conciliation proceedings under this Act or an award which is declared by the appropriate Government

to be binding under Sub-section (2) of Section 15 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 or 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;

(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.

15. I must confess that the language of the definition of "" industrial dispute "" is so wide that giving the words their ordinary meaning, even a dispute

between an employer and one of the workmen or between one workman and another work-man which is connected with one or other of the

matters mentioned therein would fall within the definition. But it was contended

that in construing the definition, the objects of the Act and the scheme of the several provisions of the Act have to be taken into consideration. A reference was made to the statement of objects and reasons

published along with the Bill before it became law and reliance was placed on the following passage:

The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to

secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising

from the imposition of restraints on the rights of strike and lock-out, which must remain in-violate, except where considerations of public interest

override such rights.

From this passage learned Counsel sought to draw the inference that it was only a dispute which otherwise would have resulted in a strike or lock-

out which was intended to be referred to Industrial Tribunals for determination. We, however do not think it safe to construe the language, of the

definition in the Act by some- thing which might be implied from the statement of objects and reasons. It has been often pointed out that in

construing an enactment such statement of objects and reasons would be irrelevant. Not infrequently the objects and reasons of a legislation as

announced at the initial stage of a Bill do not coincide with the enactment when finally passed.

16. Some assistance was sought by learned Counsel from the provisions of Section 10(2) of the Act which provides that when the parties to a

dispute apply for a reference, the Government must be satisfied that the persons applying represented the majority of such party before making a

reference. We do not think that this provision necessarily leads to the conclusion that there could be no industrial dispute unless the majority of

workmen is ranged as one of the parties, and it must not be overlooked that in Section 10(1) of the Act there is no such condition which requires

to be fulfilled before the Government makes an order referring a dispute to a Tribunal. The provisions of Section 18 do provide food for thought.

The award is declared to be binding not only on all parties to the industrial dispute, but where a party is composed of workmen on 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. This undoubtedly suggests that some-thing more than an individual dispute between a worker or a few workers and the employer is meant by an industrial dispute. It suggests that it must be a collective dispute, i.e. a dispute between the employer on the one hand and the entire establishment or a part of the establishment on the other hand in which case it is reason-able to presume that at least a substantial number of the employees in the establishment as a whole or in the concerned part of the establishment should be at dispute.

17. Reference was made to observations in cases decided in England in which the definition of "" trade dispute "" corresponds to the definition of industrial dispute"" in our Act. In *National Association of Local Government Officers v. Bolton Corporation* (1943) A.C. 166, legislation similar to the Industrial Disputes Act was described by Lord Wright as "" dealing with collective bargain, trade practices and so forth "". In *Ex parte Keable Press, Ltd*, a member of a trade union had formerly been employed by a newspaper which for a time ceased publication. When it resumed publication, the newspaper applied to the Union for suitable workmen. The Union sent the former employee in question, but the newspaper refused to accept him. The Union insisted on his re-instatement and called a strike in consequence. It was contended that it was not a trade dispute since it was a dispute between the employers and the Union and not between the employers and their employees. This contention was negative, because there was evidence that the Union in insisting on the re-instatement of the workmen in question was acting on behalf of or with the approval of its members who were all workmen. There could be no better proof of the existence of a dispute in relation to the re-instatement of the employee than the fact that the men came out on strike, because he had not been re-instated. Mr. Thiruvengkatachari relying on this decision contended that merely because the union raised a dispute of its own accord, it could not be said that there was an industrial dispute. It was only when the workmen backed up the Union by supporting its demands for re-instatement that it can be said that a dispute existed. In the case before us, there is nothing to indicate that the demands of the Union in the communication addressed to the

Government were ever adopted by the workers. This decision is certainly authority for the position that there could be an industrial dispute over the re-instatement of a single individual worker. But that dispute had been converted into a collective dispute by the Union acting on behalf of the workmen in general and by the workmen backing up the Union by obeying the call to come out on strike. The question whether in the absence of these circumstances, an individual dispute could be treated as an industrial dispute did not arise for decision. On the other hand assuming that in its origin the dispute was not a trade dispute, it was decided that it could become a trade dispute in its later stages (vide also per Lord Parmoor in *Larkin v. Long* (1915) A.C. 814.)

18. There are observations in the well-known case of *Conway v. Wade* (1909) A.C. 506 which were pressed into service by counsel on both sides. Counsel for the petitioner relied upon the following dicta of Lord Loreburn, L.C.

If this section is to apply there must be a dispute, however the subject-matter of it be defined. A mere personal quarrel or a gambling or an agitation will not suffice. It must be something fairly definite and of real substance.

For the contesting respondent the following passage from Lord Atkinson's speech, was relied on-

In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other

In the context in which these words occur, we do not think that they meant anything more than that there could not be a trade dispute when one of the parties was an outsider, neither an employer nor a workman and when he had no authority from the Trade Union body to act as he did. In the same case Lord Shaw said:

But I cannot see my way to hold that " trade dispute " necessarily includes accordingly every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded it may be, upon personal animosity, may come to be a subject in which sides are taken, and may develop into a situation of a general aspect containing the

characteristics-of trade dispute; but until it reaches that stage I cannot hold that a trade dispute necessarily exists.

None of the English decisions cited have any direct bearing on the question in issue before us.

19. The observations in the Australian cases are even less helpful because there is no definition of an industrial disputes which was construed in

those cases. In *Jumbunna Coal Mine, No Liability v. Victorian Coal Miners' Association* (1908) 6 C.L.R. 309 Griffith, C.J., said:

An industrial dispute exists where a considerable number of employees engaged in some branch of industry make common cause in demanding

from or refusing to their employers (whether one or more) some change in the conditions of employment which is denied to them or asked of them.

In *Federated Saw Mill & Co. Employees of Australasia v. James Moore and Sea Proprietary, Ltd.* C. L.R. 465 the same learned Judge said:

The word " industrial " as used in Section 51 (xxxv) points, I think, to the nature or quality of the disputes, and denotes, two qualities which

distinguished them from ordinary private disputes between individuals, namely, (1) that the dispute relates to industrial matters; and (2) that on one

side at least of the dispute the disputants are a body of men. acting collectively and not individually.

In the judgment of Isacs, J., in *George Hudson, Ltd. v. Australian Timber Workers' Union* 32 C. L. R. 413, the difference between an industrial

dispute and an individual dispute is well drawn. The learned Judge observed-

The very nature of an " industrial dispute " as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the

specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees

"from the class of employers limited by the ambit of disturbance or dislocation of public services which has arisen or which might arise if the

demand were not acceded to and observed for a period really indefinite It is a battle by the claimants, not for themselves alone; and not as against

the respondents alone but by the claimants as far as they represent their class, against the respondents so far as they represent their class.

As already observed, these observations only give expression to what is generally understood by an industrial dispute and they were not on any

specific language of any enactment.

20. In the judgment of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay* (1949) F. L. J 154, delivered

by Mahajan, J., there are certain general observations which were not strictly necessary for the decision of the case before the Court, but they are

entitled to great weight. After pointing out that,

" Non-employment ", is the negative of " employment " and would mean that disputes of work- men out of service with their employers are within

the ambit of the definition

the learned Judge went on to give four illustrations to elucidate the point of which the third is as follows:

An employer may dismiss a man, or decline to employ him. This matter raises a dispute as to non-employment.

Difficult questions arise when the only parties to a dispute are the employer on the one hand and certain dismissed employees on the other hand. If

the dismissal is the origin of the dispute, it is doubtful if the dismissed workman could be deemed to be a workman within the meaning of the Act,--

see definition of " workman " in Section 2 (s) of the Act. Of course, if there was an industrial dispute and during that dispute a workman is

discharged, he may be treated as a workman for the purposes of proceedings under the Act. But if there was no preceding industrial dispute and

the dispute started with the dismissal, it can be contended with great force that the dismissed workman cannot be held to be a workman within the

meaning of the Act. As we have already mentioned, in the view we take as to the validity of the order of reference made by the Government, all

these questions need not be finally decided. I must, however, suggest that the intention of the Legislature may be expressed in a more clear and

unambiguous language than it is at present; to decide whether an individual dispute between an employee or employees on the one side and the

employer on the other side is an industrial dispute which could be referred to a Tribunal for determination even when a substantial section of the

entire establishment or a recognised part of the establishment does not take up his or their cause.

21. As we have held that the order of reference made by the Government is invalid, it follows that the proceedings of the Industrial Tribunal in

pursuance of that order are without jurisdiction. They and the award of the Tribunal in which they culminated must be and are hereby quashed.

There will be no order as to costs of this application.

Mack, J.

21. I am in complete agreement with My Lord, the Chief Justice and would add a few observations. The Industrial Disputes Act was never

intended to provide a machinery for redress by a dismissed workman or even by a group of workmen who may be simultaneously punished or

dismissed. They cannot by joining in a demand for re-instatement create an industrial dispute after their dismissal. If such a dismissal however even

of an individual workman is taken up by a Workers' Union or a substantial body of workmen who continue in employment and espouse his cause

then an industrial dispute may arise.

22. The definition of "industrial dispute" in Section 2(k) of the Act has to be gleaned from the scope and context of the whole Act, as interpreted

by decisions to which the learned Chief Justice has referred. u/s 10(2) of the Act which provides for a reference to a Court or Tribunal on the

application of the parties to an industrial dispute the Government if satisfied that the persons applying represent the majority of each party shall

make the reference accordingly.. Section 33 of the Act protects a workman from discharge, dismissal or punishment during the pendency of

proceedings before a Tribunal except for misconduct not connected with the dispute. The framers of the Act were very careful to provide for the

maintenance of discipline and order amongst the workmen during an industrial dispute and never intended the Act to be misused as a lever by

individual disgruntled workers discharged, dismissed or punished for misconduct. The employer retains under the Act, therefore, the right to

dismiss, discharge or punish a workman for misconduct, or disobedience to orders unconnected with an industrial dispute pending before a

Tribunal.

23. It is extremely difficult to follow how in this case the dismissal of R. M. Sundaram in January, 1948, an isolated case of disciplinary action not

taken up then and there by the other workmen could have been made the subject-matter of an industrial dispute specifically referred by

Government to the Tribunal on 8th December, 1948.

24. The Government's reference to the Tribunal though it purports"" to be u/s 10(1) which gives Government a discretion to so refer if an industrial, dispute exists or is apprehended is really a hybrid one under Sections 10(1) and; 10(2). The only documents read in the Government Order issuing the reference were two letters from the Commissioner of Labour. The only industrial dispute envisaged in these letters was the insistence of the management on a right to take back the remaining twenty-seven workers in order of proficiency and not of seniority. This may have been in law an industrial dispute brought as it was to the notice of the Government by one of its responsible officers, which would have justified a reference to a Tribunal of a dispute of a very limited scope. But the astonishing feature of this" reference is that the annexure to the Government Order which lays down the points of dispute for determination omits the very one reported by the Commissioner for Labour, but reproduces verbatim no less than eleven points of dispute for determination as set out in a letter of the President of the Kandan Weaving Workers" Union, dated the 4th December, 1948. The Government"s reference on the basis of. this letter, therefore, saddles on the Tribunal an enquiry of an extremely wide scope which could not but have caused it great embarrassment, one being whether R. M. Sundaram dismissed in January, 1948, should not be re-instated and another being what leave privileges casual, sick and festival holidays should be given to the workers and so on.

24. I come now to the Kandan Weaving Workers" Union who alone pressed the demands of the workers before the Tribunal. The great majority of the 200 employees belonged to the Kandan Textiles Labour Union sponsored by the management. There was some delay in its registration which was only effected on 24th December, 1948. But as the Tribunal has observed there was ample documentary evidence to show that it was in fact formed in June, 1947, and that office-bearers were elected in January, 1948 (vide Exhibits I, I (a) and II). Its first president was examined as M.W. 5 and one Ellappa Mudaliar, M.W. 4, a jobber in this mill was its first secretary. At the enquiry before the Tribunal the locus standi of the rival union, the Kandan Weaving Workers" Union to represent the general body of workers was challenged and made the subject of a separate Additional Issue. The Tribunal found this issue in favour of the rival union, it would appear merely on the ground that it too had been registered

under the Trade Unions Act and could therefore represent the workers u/s 36, Clause (1) of the Industrial Disputes Act. But the Tribunal at the same time committed itself to other findings with which we are in complete agreement. When examined in the light of the materials on record they show that the Kandan Weaving Workers' Union was a mere bogus affair which had no legitimate origin and in fact no real existence at all. The Tribunal observed that there was absolutely no evidence adduced before them to show that this Union was in existence prior to August, 1948, when it appeared for the first time in letter head correspondence with the Government. Though its locus standi as a Union was challenged, neither the President, nor the Secretary, the dismissed Sundaram was able to produce any minute book or document showing that a meeting of the workers at which they were elected was held or any record in fact showing the origin or existence of the Union. Reliance was placed solely on the certificate of registration under the Trade Unions Act, from 18th October, 1948. According to the written statement filed before the Tribunal this Union was formed on 7th June, 1948. In the application for registration the Union is said to have come into existence at a General Body Meeting held on the 6th of July. In the evidence before the Tribunal an attempt was even made to show that this Union was started before Sundaram's dismissal in January 1948. Registration of an Union under the Indian Trade Unions Act is not conclusive proof of its real existence. It may raise a presumption to this effect. Certain formalities appear to have been complied with before the Registrar who without calling for further information u/s 7(1) of the Trade Unions Act directed registration considering that requirements under Sections 5 and 6 had been satisfied. In view of the inability of this Union when its locus standi was directly challenged before the Tribunal to produce any documentary evidence even of its inaugural meeting, it is a reasonable inference that had the Registrar called for such information it would not have been forthcoming before him and the Union would not have been registered. Everything therefore points to the Kandan Weaving Workers' Union being an artificial and bogus creation by the dismissed Sundaram, with the assistance and connivance of Srinivasan, the alleged first president who is said to be a member of the Tamilnad Congress Committee. In the circumstances the so-called Kandan Weaving Workers' Union was not a Union of Workmen in fact and it had

clearly no locus standi to represent any workers. The entire reference of disputes listed by this Union in a letter addressed to Government signed

by this President is clearly for this reason also bad in law and unsustainable. Unions of this kind can be created by mere letter-heads and self-

designations. Registrars-of Unions and societies would be well advised to use very freely the discretionary power vested in them u/s 7 of the Trade

Unions Act and other corresponding provisions of other Acts regulating the registration of associations of other kinds.

25. Perhaps the strongest indictment on the ""Kandan Weaving Workers" Union"" conies from the lips of two witnesses this Union examined before

the Tribunal. They are still working obviously in contentment with the remaining workmen in these mills. They are W. W. 1 and W. W. 2 who while

they said in chief-examination that they belonged to both Unions, in cross-examination said quite clearly and unambiguously that they were not

interested in the re-instatement of any of the workers. The inference is obvious that the great majority of workmen have no grievance at all against

the management with no interest in the re-instatement of Sundaram and other discharged workers sent away for disobedience to orders and other

causes.

26. This reference by Government is a very unfortunate one, bad in law and worse in its effects on labour in general, creating as it does industrial

disputes where none existed and referring them in the widest terms to an industrial Tribunal which has really no option but to go into each" matter

set out in the reference as being an. industrial dispute. The greatest caution should be exercised by Government before referring any point for

determination to a Tribunal, in arriving at a decision, whether it is in law an industrial dispute or not. Nothing can be more calculated to undermine

the morale and discipline of labour than illegal and unnecessary references of this kind which put a premium on mischievous insubordination and-

discourage and undermine the loyalty of the great majority of workmen who in this concern obviously are quite contented, and "" have no interest

in the re-instatement of the other workmen including the dismissed Sundaram.

27. I agree that the entire award should, in the circumstances, be quashed.