

(1959) 10 MAD CK 0016

In the Madras High Court

Case No : Writ App. No's. 73 and 85 of 1959

The Workers and Staff employed under the Express
Newspapers (Pr.) Ltd. and Others

APPELLANT

Vs

The Management of the Express Newspapers (Pr.) Ltd.
Madras and Others

RESPONDENT

Date of Decision : 13-10-1959

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

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

Citation : (1960) 1 LLJ 351

Hon'ble Judges : Ramaswami, J;Anantanarayanan, J

Bench : Division Bench

Advocate : K.V. Sankaran, for the Appellant; V. Thyagarajan and M.R. Narayanaswami and Addl. Govt. Pleader, for the Respondent

Judgement

Anantanarayanan, J.—These are connected Letters Patent Appeals from the order of Balakrishna Aiyar, J. in W. P. Nos. 443 and 450 of

1959 before him, in both of which the petitioner was the management of the Express Newspapers (Private) Ltd. In W. A. No. 73 of 1959, the

appellants are the workers and Staff of the Express Newspapers (Private) Ltd. represented by the secretary of Employees' Union and another. In

W. A. No. 85 of 1959, the appellant is the management of the Express Newspapers (Private) Ltd. In W. P. No., 450 of 1959, the learned Judge

directed issue of a writ of prohibition, barring the industrial tribunal from proceeding into the first part of the first question and the first part of the

second question referred to it by Government, in a reference u/s 10(1)(d) of the Industrial Disputes Act. In W. P. No. 443 of 1959, which related

to an order of the Government simultaneously issued u/s 10(3) of the Act, the

learned Judge held that no orders were necessary beyond a certain clarification, which he accordingly made.

2. The background of facts in relation to which, these references by Government were issued, has been dealt with in some detail in the order of the

learned Judge. For the purposes of these appeals, it will be sufficient if the broader landmarks of the events are "indicated. The Express

Newspapers (Private) Ltd. Madras is a private proprietary business which prints and publishes various periodicals and dailies. They include the

Indian Express, Andhra Prabha and the Andhra Prabha Illustrated Weekly.

For more than two years past, there have been disputes and legal proceedings between the management and their employees. In March 1957, a

dispute was raised by the employees on certain points, and the Government of Madras made a reference to the Industrial Tribunal which passed

an award in November 1957, upon the four questions referred to it for adjudication. Admittedly, the management took up this matter in appeal to

the Supreme Court, and obtained a stay in respect of portions of this award.

3. In March 1938, the management notified that they intended to retrench 59 workers, and an industrial dispute was raised about this. On 20th

May 1958, the Government referred the question for adjudication to the Industrial Tribunal, Madras. Upon the overruling of certain preliminary

objections, the management came up to this court with W. P. No. 810 of 1958; this was, however, finally withdrawn on 5th December 1958. On

12th October 1958, the Employees Union made certain complaints to Government, as a result of which the Minister for Home held discussions in

the presence of both parties, which were, however, unfruitful. On 31st October 1958, the management for the first time, intimated an intention to

close down their publications at Madras, and notified the employees that all workmen would be paid compensation according to law.

The Minister for Home again intervened, and this time a settlement was effected between the parties, embodied in a memorandum drawn up on 6th

November 1958 u/s 12(3) of the Industrial Disputes Act. This settlement was to subsist for a period of 2 1/2 years and the case of the employees

is that Mr. R. N. Goenka, the chairman of the Express Newspapers Ltd., then agreed in the presence of the Minister, Sri M Baktavat-salam, and

the Labour Commissioner, Sri V. Balasundaram, that the paper, Andhra Prabha,

will not be shifted for publication to Vijayawadn during this period and that its workmen will hence be continued to be employed as heretofore at Madras.

Admittedly, this was verbal assurance, and it was not included as a term of the memorandum. But the point made by the learned counsel for the worker's (Mr. Mohan Kumaramangalam) is that the workers were making protests regarding the contemplated sale of Andhra Prabha publication rights and its consequent transfer to Vijayawada, from a very early stage, on the basis of this alleged assurance, while the disclaimer or denial in respect of it by Sri R. N. Goenka came at a late stage of the proceedings before the two parties,

4. On 15th March 1959 some 50 part-time delivery boys made a demand for increased emoluments, and, when it was not conceded at once, went on strike. They were suspended by the management, and after an intervention of the conciliation officer, were taken back upon the tendering of an apology; the delivery boys thus resumed duty. In March and April 1959, the Madras Union of journalists began protesting to Government about a move that was afoot to transfer the publication of the Andhra Prabha to Vijayawada, which was a contravention of the verbal assurance already referred to, and which would result in uprooting the workers. The apprehensions were far from groundless.

On 11th April 1959, the Andhra Prabha (Private) Ltd. was incorporated at Hyderabad. On 13th April 1959, the board of directors of the Express Newspapers (Private) Ltd., resolved to sell to this body, as a going concern, the proprietary rights of printing and publishing the Andhra Prabha and the Andhra Prabha Illustrated Weekly, inter alia. At the same meeting, they further resolved to sell to the Andhra Prabha (Private) Ltd., various items of machinery valued at Rs. 1,75,000. An agreement to this effect was executed two days later, and a further agreement between the parties came into existence on 22nd April 1959, for the actual transfer to the the Andhra Prabha (Private) Ltd. of all proprietary rights in Andhra Prabha and Andhra Prabha Illustrated Weekly, together with a stipulation that the relevant employees of the Express Newspapers (Private) Ltd., should be taken into the service of the new concerns.

5. Protests by the Madras Union of Journalists against these moves commenced

from 31st March 1959. Correspondence between the parties culminated in a reply of the management intimating the facts of the transfer, and the impending shifting of machinery to Vijayawada, in consequence.

The Management stressed that the new concern had agreed to take on the existing staff and workmen, and that these workmen and others "would be advised in writing to enable them to join at Vijayawada." On 20th April 1959, there was a joint meeting of the general body of the Express Newspapers (Private) Ltd., Employees Union and the Madras Union of Journalists, at which a resolution was passed condemning the transfer of the proprietary interest in the two periodicals to an alleged benami concern, characterising the transfer as mala fide and illegal, and warning the management of the consequences. A joint action committee was set up, and this wrote to the management on 27th April 1959 threatening a strike if a satisfactory reply was not received within a stipulated period. On 24th April 1959, this was followed by an actual intimation of strike, as the management had intimated the facts of transfer by their letter dated 28th April 1959, and plainly told the workers that, subject to the term that the new concern at Vijayawada would take over the required workers, the decision to transfer could not be altered or revoked. On 27th April 1959 the employees went on strike.

6. On 29th April 1959 the management intimated the closure of the business of their various publications at Madras. They also said that notices to the employees were being issued. They made an announcement that staff and workmen will be paid wages, one month's salary in lieu of notice, and compensation as laid down under Sections 25-F and 25-FFF of the Industrial Disputes Act. Similar wages etc. were to be paid to journalists, under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955. The board of directors of the Express Newspapers (Private) Ltd. resolved on the same date to sell further items of printing machinery and equipment of the Andhra Prabha (Private) Ltd., for Rs. 525,000.

In the morning issue of the Hindu dated 30th April, 1959, an advertisement was inserted in the "to let" columns relating to the office accommodation and premises of the Express Newspapers (Private) Ltd. The joint action committee then issued a statement affirming that "there is

no closure as claimed by Sri R. N. Goenka, it is a lockout which is illegal". On 30th April, 1959, the Commissioner of Labour wrote to the

Government to say that he had attempted to explore the possibilities of a settlement, that the representatives of the employees responded to his

call, but that the management had telephoned that they had taken a final decision of "closure" and that no useful purpose could be served by any

further discussion.

7. On the same day (30th April 1959) the Government issued two orders, the first of which was the reference of the dispute to the Industrial

Tribunal for adjudication u/s 10(1)(d) of the Act. The second was issued u/s 10(3) of the Act, prohibiting the continuance of the strike and the

reprisal "lockout" in the Express Newspapers (Private) Limited, at Madras. The wording of the reference to the Industrial Tribunal, with regard to

the matters of dispute referred for adjudication is of significance in the case, and the text is as follows :

1. Whether the transfer of the publication of the Andhra Prabha and Andhra Prabha Illustrated Weekly to Andhra Prabha (Private) Limited, in

Vijayawada, is justified, and to what relief the workers and the working journalists are entitled?

2. Whether the strike of the workers and the working journalists from 27th April, 1959 and the consequent lockout by the management of the

Express Newspapers (Private) Ltd., are justified, and to what relief the workers and the working journalists are entitled?

The subsequent facts are not greatly material, though one or two of them have to be taken notice of. On 6th May, 1959, one D. S. Raghavan

appeared before the Chief Presidency Magistrate, and signed a declaration to the effect that he had ceased to be the printer and publisher of the

periodicals and dailies concerned, including the Indian Express, the Andhra Prabha, and the Andhra Prabha Illustrated Weekly among others. The

management paid out to their employees retrenchment compensation, amounting to about 8 lakhs, indisputably u/s 25-FFF of the Act, upon the

scale applicable to an undertaking closed down for any reason, not merely "on account of unavoidable circumstances" beyond the control of the

employer.

These payments have been received by the employees, we are told, subject to

demur, or "without prejudice". In W. P. No. 443 of 1959, before the learned Judge, the management sought to restrain the Government from giving effect to the order of the Government u/s 10(3) of the Act, through compelling the management to lift the alleged "lockout"; that is, to take back the workers and to continue or recommence the business, under penalty of action u/s 26 of the Act, for failure to do so. In W. P. No. 450 of 1959 a writ of prohibition was prayed for, to restrain the Industrial Tribunal from taking up for adjudication I. D. No. 26 of 1959, because there was no "industrial dispute" as defined in Section 2(k) of the Act, and the reference for adjudication u/s 10(1)(d) was, therefore, illegal and incompetent. We have earlier referred to the actual orders passed by the learned Judge in both these matters.

8. The learned Judge was aware that he was being called upon to exercise the powers of this court under Article 226 of the Constitution by the issue of a writ of prohibition, before the Industrial Tribunal had even proceeded to consider whether it had jurisdiction, viz., whether the facts establish a "closure" by the employer, which would be outside the purview of the Industrial Disputes Act, or a reprisal "lockout" disguised it may be as an alleged closing down of the business, but with the intention of bringing the workers to their knees, of continuing the actual concern notwithstanding measures or appearances to the contrary, and of recommencing the publications as soon as the object of the reprisal lockout had been achieved.

In the latter case, the further jurisdiction of the industrial tribunal to enquire into the dispute is irrefutable and has not been questioned before us.

The learned Judge has dealt with an argument by the learned Additional Government Pleader, based upon the State of Madras Vs. C.P. Sarathy

and Another, , to the effect that the orders of Government complained of being administrative in character, they could not be corrected by this

court in the exercise of its writ jurisdiction. The learned Judge proceeded to point out that the industrial tribunal was a judicial authority subject to

the jurisdiction of this court, in its supervisory character, and that if the tribunal exceeded its jurisdiction, or was about to do so, this court could

always restrain or correct.

He quoted the observations of Rajagopalan, J. on Radhakrishna Mills (Pollachi)

Ltd. Vs. State of Madras and Others, , to the effect that if the dispute was not an ""industrial dispute"" u/s 2(k) of the Act, the tribunal would have no jurisdiction. The learned Judge then observed :

If a dispute is not an "industrial dispute", the tribunal would not acquire any jurisdiction to proceed into the matter, merely because the

Government have made a reference to it. Jurisdiction is not acquired by giving names to things. Nor by incompetent references.

This view of the teamed Judge, if we may say so with respect, is undoubtedly the correct statement of the law, and derives support from the

exposition of the law in several decisions.

9. The learned Judge himself referred to State of Madras v. Padmanabha AIR 1958 Mad 578, and to the judgment of the Bench in appeal

therefrom, where it is unmistakably laid down that though an executive act cannot be quashed by a writ of certiorari, where a judicial or a quasi-

judicial tribunal assumes a jurisdiction by virtue of such act, and does something or is about to do something in furtherance of the jurisdiction, the

power of this court to interfere or restrain by virtue of appropriate writ, is indisputable. Other authority upon this aspect will be found in passages in

Kaleswari Handloom Factory by Proprietor, P.M.S. Guruswami Nadar and Others Vs. The State of Madras and Others, , M.K. Krishnamurthy,

Ex-Proprietor, Photo Litho Press Vs. The Industrial Tribunal and Another, and the decision of the Bench in Mariamman Handloom Factory and

Others Vs. State of Madras and Others, . We do not think that this point need be laboured further.

10. The more difficult question was whether this court had jurisdiction to issue the writ of prohibition even at the earliest stage, and even before the

Industrial Tribunal had proceeded to consider whether it had jurisdiction. That implies the issue whether the dispute was really an ""industrial

dispute"" and whether the reference u/s 10(1)(d) was competent in the context of the facts, and the definition in Section 2(k) of the Act. The

learned Judge thought that the jurisdiction of this court to issue a writ of prohibition, even at the earliest stage also, could not be denied. He referred

to the observation of Rajagopalan, J. in W. P. No. 267 of 1957, etc. to the effect that, in a proper case, this court would be justified in dealing

with the matter even in its earliest stage, prior even to the assumption of a

jurisdiction by the industrial tribunal, or the commencement of its enquiry.

With respect, we agree.

There can be no doubt that the true position at law is that (i) this court has jurisdiction to interfere even prior to any enquiry by an industrial tribunal;

(2) that the industrial tribunal has an initial jurisdiction to enquire into its own jurisdiction, that is, into the existence of an "industrial dispute" or the

legality of the reference; and (3) that the industrial tribunal cannot acquire jurisdiction by wrongly deciding the issue of its own jurisdiction. As soon

as it makes such a wrong decision, the party aggrieved may apply for a writ of prohibition to this court.

11. In 72 Mad LW 640 : (A.I.R. 1900 Mad. 82), the learned Chief Justice observed, in delivering the judgment of the Bench :

Rajagopalan, J. made it abundantly clear that this court certainly had Jurisdiction to decide the question, and in a proper case, this court would be

justified in dealing with the matter at the earliest stage, before even the industrial tribunal had begun its proceedings. With respect to the learned

Judge, we are in entire agreement with this statement of the law.

In Kaleswari Handloom Factory by Proprietor, P.M.S. Guruswami Nadar and Others Vs. The State of Madras and Others, , Rajagopalan, J.

observed :

I am not to be understood as saying that in no circumstances can a writ of prohibition issue when a dispute is referred as an industrial dispute to an

industrial tribunal, and that tribunal has not decided whether it is an industrial dispute.

12. In M.K. Krishnamurthy, Ex-Proprietor, Photo Litho Press Vs. The Industrial Tribunal and Another, , the same learned Judge pointed out that

the industrial tribunal had jurisdiction to enquire into the existence of an ""industrial dispute"" and thereby into its own jurisdiction, but that a wrong

decision upon the issue would not clothe it with further jurisdiction. We are hence clear that the amplitude of the power of this court to interfere

even at the present stage, is not in doubt or controversy, where, upon the merits, such interference is justified. But obviously this must be a case

where the absence of jurisdiction of the tribunal is so patent ab initio, that it would be an abuse of power, or an injustice, to permit it to proceed

further.

13. For, jurisdiction is one thing, and propriety is quite another. It has been held that the issue of the writ of prohibition though not, of course, is of

right and not discretionary, is said to be *ex debito justitiae* (*Burder v. Valey*, 1840-12 Ad. and El. 233). In Halsbury's Laws of England, 3rd Edn.

Vol. II, paras 218 and 219, it is stated as follows :

Prohibition goes as soon as the inferior tribunal proceeds to apply a wrong principle of law, when deciding a fact on which the jurisdiction

depends In any event, where the jurisdiction of the inferior court depends on the judicial determination of facts, the order does not lie until the

court has wrongfully on these facts given itself jurisdiction.

14. In other words, for the very reason that the issue of a writ is of right, the writ ought not to issue lightly, where a tribunal which has jurisdiction

ex facie is proceeding to act, though the determination of the further facts by that tribunal may terminate its enquiry. This is the principle of *Skipton*

Industrial Co-operative Society Ltd. v. Prince, (1864) 33 L.J.Q.B. 323, where an inferior tribunal proceeds in a case properly within its

jurisdiction, no prohibition can be awarded till the pleadings raise an issue which the court is incompetent to try. See the headnote in the *Mayor*

and *Aldermen of the City of London v. R. H. Cox*. (1867) 2 H.L. 239, though that case proceeded upon different facts.

15. In the context of a Welfare State, where industrial peace is a potent factor for progress, it is obvious that the proper functioning of such

industrial tribunals subserves the public good, and their powers and functions should be interfered with only in the strict interests of justice. We do

not think it will be denied that this Court, in the exercise of its supervisory jurisdiction, is not very well fitted to discharge it by an elaborate enquiry,

by testing issues of facts, by the assessment of the volume of evidence as at trial, in brief, by taking upon itself that labour of evidentiary analysis

and conclusions upon disputed issues, for which such tribunals have come into existence.

We do not mean by this to express any view in limitation of the amplitude of the powers of this court to enquire into the facts, even at length, in

order to decide the preliminary issue of the jurisdiction of an industrial tribunal, or the existence of an "industrial dispute" within the meaning of the

Act. In AIR 1958 Mad. 578, for instance, a Commissioner was appointed by this

court to ascertain certain facts, and his report was considered in arriving at a finding. But all that we mean is that it would not be proper that this court should virtually substitute itself for the industrial tribunal, embarking on any extensive enquiry or the recording of evidence. Certainly, where it is plain that there is no "industrial dispute" at all, where the reference is incompetent, or illegal, because the right of a proprietor to close down his business, to quit for good and not continue it, is not to be questioned by organised labour or by the Government, it will be sheer harassment to permit a tribunal to function. In such cases, the writ must issue. But what is contended here is that the business has not been closed down, that the employer is functioning and has every intention to continue to function, and that he is really conducting the reprisal lockout in order to bring labour to its knees, clothing it with the nomenclature and the semblance of "closure" for his own purposes. Is this not a matter for evidence, and are the circumstances and factors relied on by the learned Judge so decisive, that the hands of the statutory tribunal should be Stayed by the writ?

16. In this context, we desire to refer to a passage from a modern writer which has been cited in two decisions of this court, viz., *The Sree*

Meenakshi Mills Ltd. Vs. The State of Madras and Others, and Dindigal Skin Merchants' Association and Others Vs. The Industrial Tribunal,

Madurai and Others, . The passage is from Julian Huxley's "Economic Man and Social Man" and runs as follows :

When a big employer talks about his democratic right to individual freedom, meaning thereby a claim to socially irresponsible control over a huge

industrial concern, and over the lives of tens of thousands of the human beings whom it happens to employ, he talks in a dying language.

17. This is not for the approval of any particular economic doctrine, but in order to show that legislation like the Industrial Disputes Act and bodies

such as industrial tribunals are unavoidable in a progressing industrial society. It is in the public interest that such tribunals should Function, and their

working must not be impeded, unless the tribunal is about to exceed its powers patently and unmistakably. We shall now proceed to consider

those grounds upon which the learned Judge thought that the employer in this case was effecting a "closure" and not "lockout", and that since his

right to discontinue his business was admittedly outside the purview of the Industrial Disputes Act, the reference was illegal and incompetent.

The same criteria would apply to the right of the employer to transfer his business elsewhere, to sell any part of his proprietary interests, or to

remove his machinery to some Other place. Actually, as Mr. Mohan Kumaramangalam for the workers conceded, the question of the transfer of

publication rights in Andhra Prabha and Andhra Prabha Illustrated Weekly to a different concern functioning at Vijayawada, is part of the same

problem of "closure".

18. The decisions that expound the law directly and clearly upon this aspect are: Indian Metal and Metallurgical Corporation Vs. Industrial

Tribunal, Madras and Another, , Jaya Bharat Tile Works, Samalkot, Madras State Vs. The State of Madras and Others, , the Bench decision in

appeal therefrom in Jaya Bharat Tile Works, Samalkot, Madras State Vs. The State of Madras and Others, and M.K. Krishnamurthy, Ex-

Proprietor, Photo Litho Press Vs. The Industrial Tribunal and Another, . We have carefully examined these decisions, and this area of the case

law. We agree, with respect, with the learned Judge in his statement of the law that under the fundamental rights guaranteed by the Constitution

(Article 19(1)(g)), a man has right to relinquish his business, to close down without being coerced to continue or to re-commence, a right to

transfer his business elsewhere, to sell, or to split up his business into several subsidiary units.

These rights are not unqualified, as pointed out in Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, . But

those exceptional restraints or provisos are not now relevant. The decisions cited above afford us the criteria to distinguish a "lockout" from a

closure", in the context of a temporary Suspension of business, which, as the learned Judge observes is a convenient neutral expression to

designate a certain fact. In the case of a closure, it is not merely the closing down of the place of business. The business itself is relinquished clearly

and unmistakably, and the legal personality of the concern comes to an end. The essence of the "lockout" on the contrary, is that the place of

business is closed down, that workers are shut out, that the employer does certain acts with the intention of forcing the workers to terms, and is

either continuing the business really throughout, or intends to re-commence his activities as soon as his object has been achieved.

19. Now, "lockout" has been defined in Section 2(k) of the Industrial Disputes Act, as ""the closing of place of employment, or the suspension of

work, or the refusal by an employer to continue to employ any number of persons employed by him"".

20. In Sri Ramachandra Spinning Mill, Pandalapaka v. State of Madras, 1953 I L.L.J. 216, the learned Judge himself (Balakrishna Aiyar J.)

described a ""lockout"" as follows:

The lockout is the corresponding weapon in the armoury of the employer. If an employer shuts down his place of business as a means of reprisal

or as an instrument of coercion or as a mode of exerting pressure on the employees, or generally speaking, when his act is what may be called an

act of belligerency, there would be a lockout. If, on the other hand, he shuts down his work because he cannot, for instance, get the raw materials

or the fuel or the power necessary to carry on his undertaking, or because he is unable to sell the goods he has made, or because his credit is

exhausted, or because he is losing money, that would not be a lockout.....

Where an employer suspends work and the question is whether that

suspension is a lockout or not, we will have to enquire, why did he shut down? Was it a bona fide business decision, or was it a move vis-a-vis the

labourers employed""?

21. With great respect, we would affirm that that is precisely the question in the present case, and that is a question which the industrial tribunal

would have to answer, upon an assemblage of the materials and evidence, as we shall see later, the grounds relied upon by the learned Judge for

his view that the employer was effecting a ""closure"" in the present case, though certainly relevant, are not decisive; in the interests of justice, further

inquiry and evidence appear inevitable, and that means that the industrial tribunal would have to be permitted to function.

22. In Ballentine's ""Law dictionary"" 1948 Edn. we find the following definition of a ""lockout"", which is particularly helpful, as it relates to the

United States, where industrial practice is very highly developed: ""A proceeding by an employer of labour, the purpose of which is to bring his

employees to his terms, by shutting them off from employment and persuading

other employers engaged in a similar business not to employ them, thereby forcing them to return to work for him, on his terms"". The very description is suggestive, and clearly implies that a seeming ""closure"", though the employer really intends to achieve the purpose of a lockout, may be one of the devices employed to obtain the benefits of the strategy of a lockout.

23. We have carefully considered the argument that what has happened in the present case is a ""closure"" and not a ""lockout,"" because, unlike the

case in *Jaya Bharat Tile Works, Samalkot, Madras State Vs. The State of Madras and Others*, where the closure was only temporary from 24th

August 1950 to 31st December 1950, in the present case, the Express Newspapers (Private) Ltd. have closed down their activities for good, as

far as Madras is concerned. We do not think that this argument is sound; and it cannot be sustained upon the allegations traversed before us. The

fact itself is denied. It is strenuously contended before us that the teleprinter and process establishments are even now functioning in Madras, and

that supplies of paper are being received.

It is difficult for us to see how, without further evidence, these matters can be satisfactorily determined. Again, we do not think that, even from an

abstract point of view, the fact that the suspension of business continues when the writ proceedings have commenced, is a true test. If it is at all

possible, for an employer to disguise a reprisal lockout as a closure (and undoubtedly the cases referred to by us earlier deal with the crucial

question, in one manner or other, whether the "closure" was bona fide and real, or was truly a lockout), the fact that the employer continued the

suspension of the business when the writ proceedings commence, or the tribunal embarks on its enquiry, cannot be conclusive.

It may not even be significant. For such an employer may wait for the termination of the proceedings, and, after he forces the workers to capitulate,

or has obtained the services of others on better terms, he may display his hand by reactivating the business which he really never relinquished. This

is at least conceivable, and so long as it is conceivable, it must be a matter for evidence in each case.

24. We must not be taken as implying that we do not think that the circumstances relied on by the learned Judge are not indications of a ""closure"".

They certainly constitute circumstantial evidence of it, and perhaps even impressive evidence. It is true that several announcements were made, that

a declaration was made before the Chief Presidency Magistrate, in respect of the discontinuance of the publications, that compensation to the tune

of 8 lakhs was actually paid. Again, it is true that the employer was running a risk of being prosecuted u/s 26 of the Act in respect of the Section

10(3) order, if the business was re-activated, and the truth of the alleged reprisal lockout thus made manifest.

But there are considerations per contra, and the situation can be said, without exaggeration, to be somewhat complex. Sri R. N. Goenka is

admittedly a very rich man, to whom even 8 lakhs may not be a very great sum. It is alleged on behalf of the employees that his real object was to

evade the imposition of a particular wage structure in this industry, in relation to existing labour employed by him, which would cost him far more

than 8 lakhs. It is stated that though this particular group of newspapers at Bombay and Madras have suspended their activities, the Delhi branch

itself is functioning.

Is it functioning merely as a vestige, or is it a symptom that the core of the proprietorship survives? Even with regard to such a simple matter, as the

minutes of a meeting of the directorate, at which the vital decision of "closure" was taken there is controversy. That document was challenged as a

fabrication brought into existence on a subsequent date. The truth and genuineness of certain other documents filed by the management, are also in

dispute. It is certainly a relevant and important fact whether the directorate did take such a decision to close down upon the date of the meeting, as

alleged by the management. But it is alleged on behalf of the employees that the meeting itself is a myth, and it is very difficult to see how the truth

could be ascertained except by the methods of evidentiary proof subjected to cross-examination.

25. In brief, unless we are to accept another branch of the argument urged before us by the learned counsel for the management (Mr. K. V.

Venkatasubramania Aiyar) that the employer's verbal appellation of "closure" is itself decisive of the fact, an argument which the learned Judge

(Balakrishna Aiyar J.) has nowhere approved or adopted in his order, we are unable to see how this question can be resolved without further

evidence, further enquiry. But that necessarily implies that the industrial Tribunal cannot be prohibited from proceeding into this preliminary issue, which is the issue of its own jurisdiction.

26. We shall next deal with the question of the sham and nominal or benami character of the transfer of publication rights in Andhra Prabha and

Andhra Prabha Illustrated Weekly to the Andhra Prabha (Private) Ltd., to function from Vijayawada. The learned Judge felt that the transfer could

not be characterised as benami since the beneficiaries were unascertained. Since the company incorporated at Hyderabad could not be said to be

a mere alias or nominee of the management, at least one of its shareholders being a different person, he was of the view that the transaction could

not be characterised as sham or nominal.

The learned Judge stressed the fundamental right of a citizen to effect a transfer of his business, or the transfer of his place of business. We could

go further, and affirm that it is evident that the employees are not concerned with the nature of this transaction per se. It may be nominal or benami;

the property law under which such transfers are sometimes inhibited, sometimes rendered voidable at the instance of persons aggrieved, has no

application to this situation of organised labour and employer. Even such expressions as ""mala fides"" or ""with intent to defeat the claim of the

workers"" are misleading and ambiguous.

We think that there is a blurring of the focus here, because evidentiary matters are confused with the point at issue. The employees alleged that

there was a particular binding assurance, under which they were to be retained as workmen in the establishments of the Andhra Prabha and the

Andhra Prabha Illustrated Weekly at Madras for a period of 2 1/2 years. The question is whether this assurance is true, and whether the transfer,

in effect, infringes it. If the transfer infringes such a binding assurance, further questions would be whether the workmen are entitled to reinstatement

at Madras, or whether they are now to be offered employment at Vijayawada u/s 25-FF proviso (c) in particular, and in this case, upon what

further terms and allowances.

The Industrial Tribunal undoubtedly possesses a jurisdiction to proceed into the factum of the assurance, its binding character, and these

consequential matters. The circumstances, surrounding the transfer of the

publication rights, and the terms of the transfer itself, are questions of evidence which may be perfectly relevant in such an enquiry. It is not sought to be argued before us on behalf of the employees that they have a direct interest in the transfer of proprietary rights, or the sales of the machinery.

27. It may be convenient, at this stage, to take note of another argument, which is purely verbal upon one aspect, but which upon another aspect seeks to challenge the bona fides of Government in making this reference. We have earlier set out the text of the reference, and it will be noted that the language is imperfect and unhappy. The only "industrial dispute" in the case is whether the action of the management was a "closing" of the business, which is clearly outside the purview of the Act, or whether it was a reprisal "lockout" disguised as a closure, or clothed with its semblance.

It is not as if the lockout as a reprisal measure is admitted by both the parties, and that its legality or illegality is the substance of a dispute, as the text suggests. But the Government have made it repeatedly plain, and before us by submission of the learned Government Pleader supported by an affidavit, that they did not intend to prejudge the issue, that their reference to the tribunal was in respect of the dispute, whether the action of the management was a "closure" or "lockout", and that the wording of the reference is unfortunate and misleading. We do not see why this assurance should not be accepted.

The learned counsel for the management (Sri K. V. Venkatasubramania Aiyar) has drawn our attention to the fact that u/s 10(4), of the Act, the tribunal has to confine its adjudication to the points referred to it, and to matters incidental thereto. But of course, the reference by Government, and the clarification now made have to be taken together; otherwise, the mere verbal form, the clerical error, will impede the proceedings, which is not in the interest of justice.

Again, as observed in *Mariamman Handloom Factory and Others Vs. State of Madras and Others*, , Section 10(4) of the Act does not preclude the tribunal, expressly or impliedly, from deciding whether there is an "industrial dispute". We would further point out that the learned Judge (Balakrishna Aiyar J.) understood the reference in the manner now urged before us, and proceeded throughout on that interpretation. Otherwise,

the learned Judge could have disposed of the applications in a few brief lines to the effect that the reference was misconceived since the fact of a
lockout"" was not admitted by the employer.

28. But the more serious aspect of this argument relates to the question of the bona fides of the Government. Learned counsel for the management

has indeed proceeded so far as to claim that the reference is illegal, because Government acted mala animo in the matter, deliberately prejudging

the issue by the text of the reference, and simultaneously making the order u/s 10(3) of the Act in order to coerce the employer to recommence his

business, upon penalty of action u/s 26 of the Act. In view of the gravity of these allegations, we heard the learned Government Pleader upon this

aspect, and the Government have filed an affidavit disclaiming all mala fides, and stressing that action u/s 10(3) of the Act was taken in the interest

of industrial peace, in a situation of urgency which threatened to deteriorate.

Government said that they took a prima facie view that, as a reprisal to the strike of the workmen, the employer had apparently locked out the

employees. Indeed, it is obvious that the case of the management, that they had effected a closure, would be far more convincing, if that had come

independently of any situation of strike, and not as an immediate reaction to it, which is the apparent tenor of events. Not that an employer has no

right to close down for good, being disgusted with the conduct of the workmen. For his motives are as much outside the purview of an ""industrial

dispute"", as the closure itself, is.

This is affirmed by the decisions to which reference has been already made. But in such a contest of events, the industrial tribunal would certainly

be clothed with jurisdiction to ascertain whether there is a bona fide closure, or whether there is a reprisal lockout disguised as a closure. We have

carefully considered the action of Government, and we have no reason to assume that Government acted mala fide in making the reference, and in

issuing the order u/s 10(3) of the Act. Indeed, no grounds for such a view have been even suggested before us. But we do consider that action u/s

10(3) of the Act is misconceived, under circumstances of this kind. This matter is discussed by us a little later.

29. It is now time to take stock of the argument pressed before us by the learned counsel for the management (Sri K. V. Venkatasubramania

Aiyar) with great earnestness, that the application of the employer is decisive, and that no question whether his conduct really amounts to a closure" or "lockout" can arise, when he chooses to term it as a "closure". This argument of "nomenclature" as it may be conveniently designated, has been pressed upon the analogy of the unilateral declaration of severance in status by an individual member of a Hindu coparcenary. The declaration itself is the severance, and as the decisions affirm, the conscience of the undivided member making the declaration "cannot be searched".

We do not think that this analogy is helpful, or that it holds the field. The true point is that an employer is equally at liberty to close down his business, and that his motives in doing so cannot be canvassed. Both the closure and the motives actuating it are outside the purview of the Act.

But a lockout is very much within the scope of the Act, and of the industrial tribunal exercising powers under the Act. It is a reprisal measure, or a part of the strategy open to an employer in relation to his employees. It cannot be in the interest of justice that the employer should be permitted to evade such adjudication, because while really effecting a "lockout", he uses the terminology of "closure". We would certainly agree that the announcements of his conduct are evidence, precisely like the other steps taken by him. But an announcement cannot be the sole, decisive factor.

30. Such a view would render meaningless the numerous decisions of our High Court and the Supreme Court, in which expressions like "real" and bona fide" have been used in regard to alleged closure by employers, which were impugned as illegal lockouts by organised labour. Actually Mr. Venkatasubramania Aiyar, characterises these expressions as misconceived and tautological; but we are unable to agree.

31. The argument is sought to be supported upon the history of Section 25-FFF of the Act, in relation to the following decisions of the Supreme Court: (1) Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, , (2) Workmen of Dahingeapara Tea Estate Vs. Dahingeapara Tea Estate, , and (3) Hariprasad v. A. D. Divelkar, (S) AIR 1957 SC 121. It is urged that Section 25-FFF came to be embodied as soon as two of these decisions were pronounced by the Supreme Court, and the legislature came to realise, that, since courts had taken the view that

retrenchment"" was quite distinct from the discharge of workmen consequent upon a closure of the business, legislative provision was necessary for

compensation to the workmen in such cases. That was provided upon two scales.

Firstly, where the closure was due to circumstances beyond the control of the employer, and secondly, where it was due to some choice or

voluntary act of the employer. In the present case, compensation has admittedly been paid upon the higher scale which applies to a voluntary

choice. We think that it is plain that Section 25-FFF has nothing to do with ""lockouts"". We are quite unable to see how it can help an argument

that, even where an employer actually brings about a reprisal lockout, terming it as a ""closure"" in order to avoid the jurisdiction of the Industrial

Tribunal, or other consequences to a ""lockout"" the terminology is decisive on the fact.

On the contrary, we agree, with respect, with the observations of the learned Judge that the test is whether the employer is really continuing the

business, as distinguished from a mere outward form of it, such as keeping the place of business open, and whether he has the intention of

reactivating the business when his object has been achieved. That, in our view, can only be determined in the present case, at least, by taking

evidence upon matters still unascertained and by a further enquiry which this court cannot properly make at this initial stage in the exercise of its

supervisory jurisdiction.

32. As regards Section 10(3) of the Act, we are unable to see how the mere enactment of this provision, which is clearly an emergency power

vested in Government for the sake of maintaining industrial peace, furnishes any support for the ""nomenclature"" argument that we have already

referred to. We must recollect that industrial peace is a vital matter, and that Governments bear a responsibility in safeguarding it. Situations of

emergency may arise, where it is imperative that a breakdown of the civil order should be avoided at all costs; in such a short period, restraints

upon individual freedom, not Ordinarily imposed might have to be imposed in the public interest.

Still, we do think that the action of Government u/s 10(3) of the Act was misconceived in this particular case. Clearly, what the legislature, intended

by enacting this Sub-section was to clothe the Government with emergency

powers, where the continuance of the strike or lockout, as the case may be, threatened, public safety. Where the very fact of "lockout" is in dispute, and the employer claims to have closed down his business for good, the use of this power is clearly improper and erroneous; virtually it amounts to a coercion of the employer to continue in his business, notwithstanding his intention to close down, and that is contrary to law. There is this possibility of injustice that the use of Section 10(3) in such cases might amount to an illegal coercion. For that reason we would agree with the clarification made by the learned Judge in dealing with W.P. No. 443 of 1959. The situation may, of course, be different if the enquiry by the Industrial Tribunal established that what has really occurred is a reprisal "lockout" disguised as a closure. But until that is done, the Government should not really use this weapon against the subject, and it should be confined to those cases where both the employer and the workmen agree that a strike and consequent lockout have occurred, but where each side contends that its action is striking or locking out, as the case may be, is justified and legal.

33. In view of this analysis, we allow W. A. No. 73 of 1959 in part, in the following manner. It is unfortunate that the defective wording of the reference by Government, renders it impossible for us to make a more elegant demarcation of the extent to which the writ of prohibition should now run; and the extent to which the industrial tribunal will be clothed with jurisdiction to make a further enquiry. We hope, however, that our meaning has been clearly and unambiguously expressed.

Firstly, the writ of prohibition will be set aside in so far as the main question is concerned, whether the strike of the workers was justified and whether the subsequent steps taken by the employer amount to a real and bona fide "closure" of the business or amount to a reprisal "lockout" disguised as a "closure". The tribunal has jurisdiction to proceed into this matter, and, if it finds that what has really occurred is a reprisal "lockout", it has power to determine and award further reliefs to the workmen which may be appropriate.

(2) If the tribunal finds that there was really a "closure" then it would have no further jurisdiction to proceed with the inquiry, except to determine whether all due reliefs have been awarded to the workmen under the Act, with

regard to the provisions and rules applicable to a closure of business.

(3) If the tribunal erroneously decides the issue of jurisdiction, viz., whether there has been a "lockout" or "closure" and assumes a further jurisdiction on the basis of such decision, the aggrieved party would have the right to apply to this court immediately for redress, through the issue of an appropriate writ.

(4) The tribunal will have jurisdiction to determine whether the assurance referred to by the workmen was given, whether it is binding, and what its consequences are. In this context, the tribunal will have jurisdiction to proceed into the circumstances of the transfer of publication rights in the

Andhra Prabha and the Andhra Prabha Illustrated Weekly, and the attempt to re-establish this concern at Vijayawada. The Tribunal has no

jurisdiction to proceed into the sham, nominal or benami character of the transfer, or the right of the proprietor to set up one item of his business

elsewhere even, through the instrument of a nominal transfer per se.

These can be ascertained purely as evidentiary matters, and the workers have no right to have such transactions impugned, or set aside. But the

workers may claim that they are entitled to be reinstated at Madras, by virtue of the assurance, for the relevant period, or entitled to be transferred

to the new concern at Vijayawada, with certain further rights regarding allowances etc. These matters may be properly determined by the industrial

tribunal.

Finally, we would reiterate the observations of the learned Judge that Government ought not to take any steps in furtherance of their order u/s

10(3) of the Act, unless it is hereafter clearly established that the employer has been, and is, indulging in a reprisal lockout.

34. W. A. No. 85 of 1959 is dismissed. We make no order as to costs in respect of these appeals.

Ramaswami, J.

35. I entirely agree with the judgment of my learned brother. On account of the importance of the subject I wish to add the following.

36. Writ of prohibition has been the subject matter of detailed Studies in England, and the United States of America and in India and the following

information can be gathered from the standard treatise on the subject:

AIR commentaries on the Constitution of India, Vol. 2, page 1858 and following;

High Prerogative Writs by A. S. Chaudhari, Vol. I, Ch. V and VI p. 161 and following;

The Constitution of India by N. R. Raghavachariar, p. 158 and following;

Markose's Judicial Control of Administrative

Action in India, Ch. VIII p. 259 and following; The Law of Extraordinary Legal Remedies by Ferns and Ferris, Ch. XVIII p. 414 and following;

and Halsbury's Laws of England, Vol. 9 p. 819 and following; and the valuable monograph;

The Judicial Control of Public Authorities in England and in Italy; a comparative study, Signor Galeotti (Prohibition, p. 195 and following).

In England the writ is so ancient that forms of it are given in Clanville the first book of English law written in 1189 A.D. The writ of prohibition is

one of the prerogative writs emanating from the High Court of Justice to an inferior tribunal, prohibiting that tribunal from proceeding further with

the matter pending before it, on the ground that such proceeding will be either without or in excess of jurisdiction or contrary to the laws of the

land, statutory or otherwise. It has always been the policy of the law to keep the inferior courts strictly within their proper sphere of jurisdiction.

37. A writ of prohibition is one of the writs specifically named under Arts. 32 and 226 of the Constitution of India. In Shorth and Mellor's Practice

of the Crown Office, 2nd Edn. a writ of prohibition is explained as being a judicial writ or process issuing out of a court of superior jurisdiction,

directed to an inferior court for the purpose of preventing the inferior court from usurping a jurisdiction with which it is not legally invested or to

compel courts entrusted with judicial duties to keep within the limits of their Jurisdiction. In R. v. Electricity Commissioners, 1924 1 KB 171,

Atkin, L. J. observed as follows ;

Both writs (prohibition and certiorari) are of great antiquity forming part of the process by which the King's Courts restrained courts of inferior

jurisdiction from exceeding their powers. Prohibition restrains the Tribunal from proceeding further in excess of jurisdiction; certiorari requires the

record or the other order of the court to be sent up to the King's Bench division to have its legality enquired into, and, if necessary, to have the

order quashed.

In *Hongkong and Shanghai Banking Corporation Vs. Bhaidas Pranjivandas and Another*, *Shah, J.* explained the distinction between the Writs of

prohibition and certiorari as follows:

A writ of prohibition and a writ of certiorari are two complementary writs. A writ of certiorari is issued requiring that the record of the

proceedings in some cause or matter pending before an inferior court to be transmitted to the superior court to be dealt with, for rectifying an order

or proceeding. That writ is issued where an order has been passed by a Tribunal, having judicial or quasi-judicial authority but the Tribunal had no

jurisdiction to pass the order or to hold the proceeding complained of. A writ of prohibition is issued for preventing a tribunal from continuing a

proceeding pending in if on the ground that it has no jurisdiction to hold the proceeding. A writ of certiorari is remedial, whereas a writ of

prohibition is preventive." (See also *Hari Vishnu v. Ah-mad Ishaque*, (S) AIR 1955 SC 253.)

Even prior to the Constitution, the High Court in the three presidency towns of Bombay, Calcutta and Madras had, in exercise of the jurisdiction

inherited by them from the old Supreme Court (Clause 8 of Madras Charter) the power, within the limits of the presidency towns, to issue

prerogative writs including that of prohibition e.g., *Manjeri S. Krishna Ayyar Vs. The Secretary, Urban Bank Ltd., Calicut and Another*, . This

power was exclusive of Section 45 of the Specific Relief Act.

38. Prohibition is the converse of mandamus (in the mandatory form) in that prohibition is issued to prevent a court or tribunal from doing

something which it has not the power to do, while mandamus is used to compel it to do something which it is required to do.

39. An application for a writ of prohibition or mandamus must specify precisely the relief claimed.

40. Where the ground for the issue of the writ has been made out, the writ can be claimed as a matter of right, or *ex debito justitiae*, for the

purpose of correcting the usurpation of the jurisdiction and preserving the subordinate courts within the proper limits. The decisions are almost

unanimous in holding that, if the aggrieved party approaches the High Court for the issue of the writ, there can be no refusal by that court, the relief

being one of right which that court is bound to grant, there being no discretion to refuse. The rulings, however, do not speak with one voice, when

the application for the writ is made by a stranger to the proceedings in the lower court, some decisions holding that even then there is no discretion

in the superior court to refuse the writ, and some others laying down that in the case of a stranger applicant, the writ is to be issued at the discretion

of the superior court and can be refused by it if it considers it proper to do so.

41. A writ of prohibition is issued on the following grounds:

(1) When the inferior court usurps jurisdiction which involves its doing something which it ought not to do.

(2) When the interior court being limited in its jurisdiction exceeds it by proceeding in matters not within jurisdiction, thereby rendering the proceedings void.

(3) When the inferior court proceeds in cases where it is prohibited by statute.

(4) When the Judges of the inferior court exceed the jurisdiction given to them by statute.

(5) Where the Judges of the inferior court have no power under the statute to act in the way they did.

(6) When the inferior court has exceeded or is about to exceed its jurisdiction or authority.

(7) Where the inferior court gives itself jurisdiction by a misconstruction of a relevant statute.

(8) Where the inferior court gives itself jurisdiction by deciding without evidence or refusing to go into evidence for finding out if it has no jurisdiction, if it turns out that it had none.

(9) Where the inferior court commits an error in procedure which involves the doing of something which is so contrary to the general laws of the land, or so vicious as to violate some fundamental principle of justice.

(10) Even if the interest of the presiding officer of the inferior court or tribunal in the subject-matter of the enquiry is not pecuniary, if it is substantial in the result of the hearing so as to make it likely that he will have a bias on one side, he is disqualified from hearing the cause.

42. The availability of another remedy by way of appeal or otherwise, is not fatal to the issue of a writ of prohibition.

43. The superior court is bound to interpose by prohibition to prevent proceedings in the inferior court, whatever be the stage at which the former

is informed about the inferior court going out of its jurisdiction, if the absence or excess of jurisdiction is either apparent on the record or if the

Superior court is satisfied about it The writ is issuable even after sentence or judgment, so long as there is something left for the writ to operate

upon.

44. Prohibition, like certiorari, lies only against judicial and quasi-judicial authorities. In 1924 I KB 171, Atkin, L. J. observed as follows :

It is to be noted that both writs deal with question of excessive jurisdiction and doubtless in their origin dealt almost exclusively with the jurisdiction

of what is described in ordinary parlance as a court of justice. But the operation of the writs has extended to control the proceedings of bodies

which do not claim to be, and would not be recognised, as courts of justice. Wherever any body of persons having legal authority to determine

questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling

jurisdiction of the King's Bench Division exercised in these writs.

Whenever a new jurisdiction is exercised or a new tribunal exercising judicial or quasi-judicial functions is established remedies like prohibition or

certiorari may be applied to them.

45. In regard to what constitutes the exercising of judicial or quasi-judicial functions, this has been discussed by me in P. Rajangam, Sub-Inspector

of Police and Others Vs. State of Madras and Others, .

46. To sum up, the jurisdiction by prohibition is primarily supervisory, having for its objects the confinement of courts of peculiar, limited or inferior

jurisdiction within their bounds; to prevent them from encroaching upon the jurisdiction of other tribunals; to restrain them from exercising

jurisdiction where they do not properly possess jurisdiction at all, or else to prevent them from exceeding their limits in matters of which they have

cognizance. The writ ordinarily lies only against judicial action; acts of a mere ministerial, administrative or executive character do not fall within its

object or scope.

However, the scope of the writ is broader than originally, and is often issued to restrain acts of others than judicial bodies, whose character and

functions have, strictly speaking, little or nothing of a judicial character in them. But even in such cases, the act sought to be prohibited is at least quasi-judicial. It has been held that as the writ originally was not governed by any narrow, technical rules, but was resorted to as a convenient mode of exercising a wholesome control over inferior tribunals, the remedy should be regarded as a liberal one, not to be applied sparingly, that the scope of the remedy ought not to be abridged, as it is far better to prevent the exercise of an unauthorised power than to be driven to the necessity of correcting the error after it has been committed. It is also held that the writ is not discretionary but demandable of right.

47. But at the same time the very width of the powers for granting writs in theory, imposes corresponding caution in practice. There is authority for the statement that prohibition, being an extraordinary remedy, is not favoured by the court; that it should issue with forbearance and caution, and only in cases of extreme necessity -- the necessity created when there is a grievance which cannot be redressed by ordinary proceedings at law or in equity.

48. But whether the remedy is discretionary or is of right, the question still remains for the court when the applicant has made out his prima facie case to decide, does the right and justice of the case call for this extraordinary remedy?

49. It is unnecessary to set out here the circumstances whereunder this court will not interfere with the injunctive and preventive remedy of prohibition and which have been judicially recognised and which will be found set out in the standard treatises referred to above (See also Om

Prakash Aggarwalla "Fundamental Rights and Constitutional Remedies" Vol. III, p. 289 and following; Venkatasubba Rao's "Prerogative Writs and Fundamental Rights" Ch. VI, p. 93 and following; Venkatesh Rao's "Law of Writs for India" Ch. V, p. 302 and following). It is enough for our

instant purpose to refer to that limitation which has received judicial recognition, It is this : where the tribunal designated by law has got jurisdiction prima facie to enquire into controverted facts, this court by way of writ

jurisdiction would not interfere and substitute its own discretion for that of the tribunal to whom that power of adjudication has been entrusted.

Interference with such discretion of the tribunal to adjudicate upon controversial

matters which prima facie it has jurisdiction to enquire into by taking, evidence or otherwise and for which ex facie there are materials, would in effect amount to undertaking the administration of the country and usurpation of the functions of the tribunal. It is but proper to assume that inferior tribunals would discharge their duties reasonably and justly and would not administer "cast-iron law" but will be guided by the facts and circumstances of each individual case.

A judge of the inferior court ought to go on with an enquiry until he ascertains -- in this case the tribunal, on receiving the reference has issued

notices for parties to appear and at that stage further proceedings have been got stayed -- that if he goes further, he would exceed his jurisdiction.

If he does not then stop, he renders himself liable to a prohibition. So, when there is prima facie jurisdiction and controverted facts to be enquired

into, the tribunal should be permitted to proceed and determine those facts, without taking upon ourselves a wholly supererogatory task and short-

circuiting those tribunals and thereby bring about the very usurpation of functions which it is our duty and privilege to guard against.

It would incidentally defeat the very purpose of prohibition because as pointed out by Valeotti, from the early cases the purpose of prohibition

emphasises its prerogative character, in the sense of being especially associated with the King's rights mainly directed to secure an orderly

administration of justice, according to the rules established by the King (page 195). This court will always curb the tendency to overstep the

legitimate limits of interference and will not readily attribute a double-dose of the original sin to inferior tribunals and which are at best not

calculated to secure an orderly administration of justice according to the rules established by the State; it is our duty to be both vigilant and

circumspect in the exercise of our writ jurisdiction (Rex v. Nat Bell Liquors Ltd. 1922 3 AC 128)

50. Bearing these principles in mind, if we examine the facts of this case, I agree with my learned brother that the Tribunal had jurisdiction to

enquire into the reference by the Government, now clarified by them and delimited by us, and then having such jurisdiction, it is for the tribunal on

the materials placed before it to adjudicate whether there was closing down of the business or a reprisal lockout disguised as a closure or clothed

with its semblance.