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A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO FACTORIES, LABOUR, WORKMEN'S COMPENSATION, INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE, PAYMENT OF WAGES, PROVIDENT FUNDS, LAW REGULATING WORK IN MINES ETC.

WITH

The Acts, Ordinances, Rules and Notifications passed by the Central Government and the State Governments, and Reports of Cases and Awards.

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CUMULATIVE INDEX TO REPORTS OF CASES (Parts I to X)

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Madras Payment of Wages Rules—Amendments.

*(G.O. Ms. No. 1979, Industries, Labour and Co-operation, 11th June, 1957.)**

In exercise of the powers conferred by sub-sections (2) and (3) of section 26 of the Payment of Wages Act, 1936 (Central Act IV of 1936), the Governor of Madras hereby makes the following amendments to the Madras Payment of Wages Rules, 1937, published with late Development Department Notification No. 133, dated the 20th February, 1937, at pages 356-359 of Part I of the *Fort St. George Gazette*, dated the 23rd February, 1937, as subsequently amended, the same having been previously published as required by sub-section (5) of section 26 of the said Act:—

AMENDMENTS.

(1) In rule 21 of the said rules—

(i) for the words "four annas" occurring in clauses (i) and (iii), the words "twenty-five naye paise" shall be substituted, and

(ii) for the words "eight annas" occurring in clause (ii), the words "fifty naye paise" shall be substituted.

(2) In Form V, in paragraph 9 (2) for the words "half an anna" the words "three naye paise" shall be substituted.

Workmen's Compensation (Madras) Rules—Amendments.

*(G.O. Ms. No. 1978, Industries, Labour and Co-operation, 11th June, 1957.)**

In exercise of the powers conferred by sub-section (1) of section 32 of the Workmen's Compensation Act, 1923 (Central Act VIII of 1923), the Governor of Madras hereby makes the following amendments to the Workmen's Compensation (Madras) Rules, 1924, published with Law Department Notification, dated 18th July, 1924, at pages 847-852 of Part I of the *Fort St. George Gazette*, dated the 18th July, 1924, as subsequently amended, the same having been previously published as required by sub-section (9) of section 34 of the said Act:—

AMENDMENTS.

In the said rules—

(i) in rule 7 for the words "eight annas" wherever they occur and the words "four annas" in item VII (*b*), the words "fifty naye paise" and "twenty-five naye paise" shall respectively be substituted;

(ii) in rule 22 (1) for the words "three annas", the words "twenty naye paise" shall be substituted.

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*Fort St. Geo. Gaz., 26-6-57, Rules Suppl. to Part I, p. 339.

THE INDUSTRIAL DISPUTES (MYSORE) RULES, 1957.

*Notification No. L. L. H. 195—I. L. D. 57 dated Bangalore, 18th June, 1957.**

In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore hereby make the following Rules, the same having been previously published in Notification No. L. S. 8406/L. W. 192-56-2 dated 17th December, 1956, as required by sub-section (1) of the said section.

PRELIMINARY.

1. *Title and application.*—(1) These rules may be called the Industrial Disputes (Mysore) Rules, 1957.

(2) They extend to the whole of the State of Mysore in relation to an industrial dispute referred to in section 2 (a) (ii) of the Act.

2. *Interpretation.*—In these rules, unless there is anything repugnant in the subject or context:—

(*a*) "Act" means the Industrial Disputes Act, 1947 (14 of 1947);

(*b*) 'Chairman" means the Chairman of a Board, or Court or if the Court consists of one person only, such person;

(*c*) "Committee" means a Works Committee constituted under sub-section (1) of section 3 of the Act;

(*d*) "form" means a form in the Schedule to these rules;

(*e*) "State Government" means, Government of Mysore;

(*f*) "section" means a section of the Act;

(*g*) With reference to clause (*g*) of section 2 of the Act, it is hereby prescribed that in relation to an industry carried on by or under the authority of a Department of the State Government the officer in charge of the industrial establishment shall be the employer in respect of that establishment.

PART I.

PROCEDURE FOR REFERENCE OF INDUSTRIAL DISPUTES TO BOARDS OF CONCILIATION, COURTS OF ENQUIRY, LABOUR COURTS OR INDUSTRIAL TRIBUNALS.

3. *Application.*—An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, to Labour Court or Tribunal shall be made in Form A and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government in the Labour Department. The application shall be accompanied by a statement setting forth :—

(*a*) the parties to the dispute;

(*b*) the specific matters in dispute;

(*c*) the total number of workmen employed in the undertaking affected;

(*d*) an estimate of the number of workmen affected or likely to be affected by the dispute; and

(*e*) the efforts made by the parties themselves to adjust the dispute.

*Mysore Gaz., 27-6-57, Pt. IV—1-C, p. 1301.

4. *Attestation of application.*—The application, and the statement accompanying it shall be signed :—

(*a*) in the case of an employer by the employer himself, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the Corporation;

(*b*) in the case of workmen, either by the President and Secretary of trade union of the workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

5. *Notification of appointment of Board, Court, Labour Court or Tribunal.*—The appointment of a Board, Court, Labour Court or Tribunal together with the names of persons constituting the Board, Court, Labour Court or Tribunal shall be notified in the *Mysore Gazette.*

6. *Notice to parties to nominate representatives.*—(1) If the State Government proposes to appoint a Board, it shall send a notice in Form B to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer personally, or if the employer is an incorporated company or a body corporate, to the agent, manager or other principal officer of such company or body.

(3) The notice to the workmen shall be sent :—

(*a*) in the case of workmen who are members of a trade union, to the President or Secretary of the trade union; and

(*b*) in the case of workmen who are not members of a trade union, to any one of the five representatives of the workmen who has attested the application made under rule 3; and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the premises of the establishment.

PART II.

ARBITRATION AGREEMENT.

7. *Arbitration Agreement.*—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form C and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of Mysore in charge of the Labour Department, the Labour Commissioner, the Assistant Commissioner of Labour and the Conciliation Officer concerned. The agreement shall be accompanied by the consent in writing, of the arbitrator or arbitrators.

8. *Attestation of the Arbitration Agreement.*—The arbitration agreement shall be signed :—

(*a*) in the case of an employer, by the employer himself, or when the employer is an incorporated Company or other body corporate by the agent, manager, or other principal officer of the Corporation;

(b) in the case of workmen, either by the President and Secretary of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

PART III.

POWERS, PROCEDURE AND DUTIES OF CONCILIATION OFFICER, BOARDS, COURTS, LABOUR COURTS, TRIBUNALS AND ARBITRATORS.

9. *Conciliation proceedings in public utility service.*—The Conciliation Officer, on receipt of a notice of a strike or lockout given under rule 72 or 73, shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

10. *Conciliation proceedings in non-public utility service.*—Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

11. The Conciliation Officer may hold a meeting of the representatives of both parties jointly or of each party separately.

12. The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

13. *Place and time of hearing.*—The sittings of a Board, Court, Labour Court or Tribunal or of an Arbitrator shall be held at such times and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or the Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit:

Provided that as far as possible the sittings shall be held at or near the place where the dispute or matter which is before it arose.

14. *Quorum for Boards and Courts.* The quorum necessary to constitute a sitting of a Board or Court shall be as follows:

	Quorum
(i) in the case of a Board—	
where the number of members is 3	... 2
where the number of members is 5	... 3
(ii) in the case of a Court—	
where the number of members is not more than 2	... 1
where the number of members is more than 2 but less than 5	... 2
where the number of members is 5 or more	... 3

15. *Evidence.*—A Board, Court, Labour Court or Tribunal or an arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit.

16. *Administration of oath.*—Any member of a Board or Court or Presiding Officer of a Labour Court or of a Tribunal, or an arbitrator may administer oath.

17. *Summons.*—A summons issued by a Board, Court, Labour Court or Tribunal shall be in Form D and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court, or Tribunal which the Board, Court, Labour Court or Tribunal thinks necessary for the purposes of such investigation or adjudication.

18. *Service of summons or notice.*—Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court or Tribunal or an arbitrator, empowered to issue such notice, summons, process or order may be served either personally or by registered post.

19. *Description of parties in certain cases.*—Where in any proceeding before a Board, Court, Labour Court or Tribunal or an arbitrator, there are numerous persons arrayed on any side, such persons shall be described as follows:—

(1) all such persons as are members of any trade union or association shall be described by the name of such trade union or association; and

(2) all such persons as are not members of any trade union or association shall be described in such manner as the Board, Court, Labour Court, or Tribunal or arbitrator, as the case may be, may determine.

20. *Manner of service in the case of numerous persons as parties to a dispute.*—(1) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court or Tribunal or an arbitrator and such persons are members of any trade union or association, the service of notice on the Secretary, or where there is no Secretary, on the principal officer, of the trade union or association shall be deemed to be service on such persons.

(2) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court or Tribunal or an arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court or Tribunal or arbitrator, as the case may be, shall, where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

21. *Procedure at the first sitting.*—At the first sitting of a Board, Court, Labour Court or Tribunal, the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case.

22. All books, papers and other documents or things produced before a Board, Court, Labour Court or Tribunal whether voluntarily or in pursuance of summons may be inspected by the Board, Court, Labour Court or Tribunal and also by such parties as the Board, Court, Labour Court or Tribunal allows; but the information obtained therefrom shall not except as provided in the Act be made public; and such parts in the books, paper, documents or things as in the opinion of the Board, Court, Labour Court or Tribunal do not relate to the matters at issue may be sealed up.

23. *Board, Court, Labour Court or Tribunal or Arbitrator may proceed ex parte.*—If without good cause shown, any party to proceedings before a Board, Court, Labour Court or Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court or Tribunal or Arbitrator may proceed as if he had duly attended or had been represented.

24. *Power of entry and inspection.*—A Board or Court, or any member thereof, or a Conciliation Officer or a Labour Court or Tribunal or any person authorised in writing by the Board, Court, Labour Court or Tribunal, in this behalf may, for the purposes of any conciliation, investigation, enquiry or adjudication entrusted to the Conciliation Officer, the Board, Court, Labour Court or Tribunal under the Act, at any time between hours of sunrise and sunset and in the case of a person authorised in writing by a Board, Court, Labour Court, or Tribunal after he has given reasonable notice, enter any building, factory, workshop, or other place or premises whatsoever, and inspect the same or any work machinery, appliance or article therein or interrogate any person therein in respect of any thing situated therein or any matter relevant to the subject-matter of the conciliation, investigation, enquiry or adjudication.

25. (1) *Power of Boards, Courts, Labour Courts and Tribunals.*—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts and Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :—

(*a*) discovery and inspection;

(*b*) granting adjournment;

(*c*) reception of evidence taken on affidavit;

and the Board, Court, Labour Court or Tribunal, may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

(2) Subject to the provisions of sub-rule (1), the Tribunal shall also have the power to consolidate a number of references under section 10 arising in the same Industry and having common issues and give a single Award determining such issues.

Provided that the Tribunal shall before giving its Award take into consideration the financial capacity of each undertaking or any other factor which needs special consideration.

26. *Assessors.*—Where assessors are appointed to advise a Tribunal under sub-section (4) of section 7 A or sub-section (4) of section 7 B or by the Court, Labour Court or Tribunal, under sub-section (5) of section 11, the Court, Labour Court or Tribunal, as the case may be, shall, in relation to proceeding before it, obtain the advice of such assessors, but such advice shall not be binding on it.

27. *Fees for Copies of awards or other documents of Labour Court or Tribunal.*—(1) Fees for making a copy of an award or an order of a Labour Court or Tribunal or any document filed in any proceedings before a Labour Court or Tribunal be charged as follows:

(*a*) for the first 200 words or less, 12 annas;

(*b*) for every additional 100 words or fraction thereof, 6 annas:

Provided that where an award or order or a document exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words, to the nearest hundred, for the purpose of assessing the copying fee.

(2) For certifying a copy of any such award or order or document, a fee of Re. 1 shall be payable.

(3) Copying and certifying fees shall be payable in cash in advance.

(4) Where a party applies for immediate delivery of a copy of any such award or order or document, an additional fee equal to one-half of the fee leviable under this rule shall be payable.

28. *Decision by majority.*—All questions arising for decision at any meeting of a Board or Court, save where the Court consists of one person, shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

29. *Correction of errors.*—The Labour Court or Tribunal or arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

30. *Right of Representatives.*—The representatives of the parties appearing before a Board, Court, Labour Court or Tribunal or an arbitrator shall have the right of examination, cross-examination and of addressing the Board, Court Labour Court or Tribunal or arbitrator when an evidence has been called.

31. *Proceedings before a Board, Court, Labour Court or Tribunal.*—The proceedings before a Board, Court, Labour Court or Tribunal shall be held in public:

Provided that the Board, Court, Labour Court or Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held *in camera*.

PART IV.

REMUNERATION OF ARBITRATORS, CHAIRMAN AND MEMBERS OF COURTS, PRESIDING OFFICERS OF LABOUR COURTS, TRIBUNALS, ASSESSORS, AND WITNESSES.

32. *Travelling allowance.*—The Chairman or a member of a Board or Court, or the Presiding Officer or an Assessor of a Labour Court or Tribunal, if a non-official, shall be entitled to draw travelling allowance and halting allowance, for any journey performed by him in connection with the performance of his duties, at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Mysore Services Regulations.

33. *Fees.*—The Chairman and a member of a Board or Court, the Presiding Officer and an Assessor of a Labour Court or Tribunal wherever he is not a salaried officer of Government may be granted such fees as may be sanctioned by the State Government in each case.

34. *Expenses of witnesses.*—Every person who is summoned and duly attends or otherwise appears as a witness before a Board, Court, Labour Court or Tribunal or an Arbitrator shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil courts in the Mysore State.

PART V.

NOTICE OF CHANGE.

35. *Notice of Change.*—Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall give notice of such intention in form E.

36. *Manner of service of Notice of Change.*—(1) Where there are numerous workmen affected by a notice of change and the majority of such workmen are members of any trade union or association the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association shall be deemed to be service on all such workmen. The employer shall, at the same time, arrange to exhibit the notice by affixing it to a notice board in the manner specified in sub-rule (2):

Provided that if the Secretary or the principal officer refuses to receive the notice or that for any other reason the notice cannot be served on the

Secretary or the Principal Officer, the exhibition of the notice in the manner in sub-rule (2) shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association, the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of twenty-one days. The notice shall be in English, the regional language and the language understood by the majority of the workmen in the establishment concerned.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the Conciliation Officer concerned and the Labour Commissioner.

PART VI.

REPRESENTATION OF PARTIES.

37. *Form of authority under Section 36.*—The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F.

38. *Parties bound by acts of representatives.*—A party appearing by a representative shall be bound by the acts of that representative.

PART VII.

WORKS COMMITTEES.

39. *Constitution.*—Any employer to whom an order made under sub-section (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed in this part.

40. *Number of members.*—The number of members constituting the Committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in and to the sections, shops or departments of the establishment:

Provided that the total number of members shall not exceed twenty:

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employer.

41. *Representatives of employer.*—Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall as far as possible, be officials in direct touch with or associated with the working of the establishment.

42. *Consultation with trade unions.*—(1) Where any workmen of an establishment are members of a registered trade union, the employer shall ask the union to inform him in writing—

(*a*) how many of the workmen are members of the union; and (*b*) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may, after informing the union refer the matter to the Conciliation Officer concerned for his decision; and the Conciliation Officer, after hearing the parties shall decide the matter and his decision shall be final.

43. *Groups of workmen's representatives.*—On receipt of the information called for under rule 42, the employer shall provide for the election of workmen's representatives on the Committee in two groups—

1. Those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and

2. those to be elected by the workmen of the establishment who are not members of the registered trade union or unions,

bearing the same proportion to each other as the union members in the establishment bear to the non-members:

Provided that where more than half the workmen are members of the union or any of the unions, no such division shall be made:

Provided further that where a registered trade union neglects or fails to furnish the information called for under sub-rule (1) of rule 42 within one month of the date of the notice requiring it to furnish such information such union shall for the purpose of this rule be treated as if it did not exist.

Provided further that where any reference has been made by the employer under sub-rule (2) of rule 42, the election shall be held on receipt of the decision of the Conciliation Officer.

44. *Electoral Constituencies.*—Where under rule 43 the workmen's representatives are to be elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a registered trade union and the other of those who are not:

Provided that the employer may, if he thinks fit sub-divide the two electoral constituencies and direct that workmen shall vote in either by groups, sections, shops or departments.

45. *Qualification of Candidates for election.*—Any workman of not less than 19 years of age and with a service of not less than one year in the establishment may if nominated as provided in these rules be a candidate for election as a representative of the workmen on the Committee:

Provided that the service qualification shall not apply to the first election in an establishment which has been in existence for less than a year.

46. *Qualification for voters.*—All workmen, other than casual employees, who are not less than 18 years of age and who have put in not less than 6 months' service in the establishment shall be entitled to vote in the election of the representative of workmen.

47. *Procedure for Election.*—(1) The employer shall fix a date as the closing date for receiving nominations from candidates for election as workmen's representatives on the Committee.

(2) For holding the election, the employer shall also fix a date which shall not be earlier than three days and later than ten days after the closing date for receiving nominations.

(3) The dates so fixed shall be notified at least seven days in advance to the workmen and the registered trade union or unions concerned. Such notice shall be affixed on the notice board or given adequate publicity amongst the workmen. The notice shall specify the number of seats to be elected by the groups, sections, shops or departments and the number to be elected by the members of the registered trade union or unions and by the non-members.

(4) A copy of such notice shall be sent to the registered trade union or unions concerned.

48. *Nomination of Candidates for Election.*—(1) Every nomination shall be made on a nomination paper in Form 'G' copies of which shall be supplied by the employer to the workmen requiring them.

(2) Each nomination paper shall be signed by the candidate to whom it relates and attested by at least two other voters belonging to the group, section, shop or department the candidate seeking election will represent, and shall be delivered to the employer.

49. *Scrutiny of nomination papers.*—(1) On the day following the last day fixed for filing nomination papers, the nomination papers shall be scrutinised by the employer in the presence of the candidates and the attesting persons and those which are not valid shall be rejected.

(2) For the purpose of sub-rule (1), a nomination paper shall be held to be not valid if (*a*) the candidate nominated is ineligible for membership under rule 45 or (*b*) the requirements of rule 48 have not been complied with.

Provided that where a candidate or an attesting person is unable to be present at the time of scrutiny, he may send a duly authorised nominee for the purpose.

50. *Voting in Election.*—(1) If the number of candidates who have been validly nominated is equal to the number of seats, the candidates shall be forthwith declared duly elected.

(2) If in any constituency the number of candidates is more than the number of seats allotted to it, voting shall take place on the day fixed for election.

(3) The election shall be held in such manner as may be convenient for each electoral constituency.

(4) The voting shall be conducted by the employer, and if any of the candidates belong to a union, such of them as the union may nominate shall be associated with the election.

(5) Every workman entitled to vote at an electoral constituency shall have as many votes as there are seats to be filled in the constituency:

Provided that each voter shall be entitled to cast only one vote in favour of any one candidate.

51. *Arrangements for Election*.—The employer shall be responsible for all arrangements in connection with the election.

52. *Officers of the Committee*.—(1) The Committee shall have among its office bearers a Chairman, a Vice-Chairman, a Secretary and a Joint Secretary. The Secretary and the Joint Secretary shall be elected every year.

(2) The Committee shall elect the Chairman and the Vice-Chairman provided that where the Chairman is elected from amongst the representatives of the employers, the Vice-Chairman shall be elected from amongst the representatives of workmen and *vice versa*:

Provided further that the post of the Chairman or the Vice-Chairman, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive terms.

(3) The Committee shall elect the Secretary and the Joint Secretary provided that where the Secretary is elected from amongst the representatives of the employers, the Joint Secretary shall be elected from amongst the representatives of the workmen and *vice versa*:

Provided further that the post of the Secretary or the Joint Secretary, as the case may be, shall not be held by a representative of the employer or the workmen, for two consecutive years.

53. *Term of office*.—(1) The term of office of a workmen's representative on the Committee other than a member chosen to fill a casual vacancy shall be two years.

(2) A member chosen to fill a casual vacancy shall hold office for the unexpired term of his predecessor.

(3) A member who, without obtaining leave from the Committee fails to attend three consecutive meetings of the Committee shall forfeit his membership.

54. *Vacancies*.—In the event of workmen's representative ceasing to be a member under sub-rule (3) of rule 53 or ceasing to be employed in the establishment or in the event of his resignation, death or otherwise, his successor shall be elected in accordance with the provisions of this part from the same group, section, shop or department to which the member vacating the seat belonged.

55. *Power to co-opt.*—The Committee shall have the right to co-opt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion. Such co-opted member shall not be entitled to vote and shall be present at meetings only for the period during which the particular question is before the Committee.

56. *Meetings.*—(1) The Committee may meet as often as necessary but not less often than once in three months (a quarter).

(2) The Committee shall, at its first meeting, regulate its own procedure.

57. *Facilities for meeting, etc.*—The employer shall provide accommodation for holding meetings of the Committee. He shall also provide all necessary facilities to the Committee and to the members thereof for carrying out the work of the Committee.

The Committee shall ordinarily meet during working hours of the establishment concerned on any working day and the representative of the workmen shall be deemed to be on duty while attending the meeting.

58. *Dissolution of works committee.*—The State Government, or where the power under section 3 has been delegated to any officer or authority under section 39, such officer or authority may, after making such inquiry as it or he may deem fit, dissolve any Works Committee at any time, by an order in writing, if he or it is satisfied that the Committee has not been constituted in accordance with these rules or that not less than two-thirds of the number of representatives of the workmen have, without any reasonable justification failed to attend three consecutive meetings of the Committee or that the Committee has, for any other reason, ceased to function :

Provided that where a Works Committee is dissolved under this rule, the employer may, and if so required by the State Government or, as the case may be, such officer or authority shall, take steps to reconstitute the Committee in accordance with these rules.

PART VIII

MISCELLANEOUS.

59. *Memorandum of Settlement.*—(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

(2) The settlement shall be signed by—

(*a*) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated Company or other body corporate by the agent, manager or other principal officer of the corporation.

(*b*) in the case of workmen, either by the President and Secretary of a trade union of workmen, or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at in the course of conciliation proceeding, the Conciliation Officer shall send a report thereof to the State Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government, the Labour Commissioner, and the Assistant Commissioner of Labour and to the Conciliation Officer concerned.

60. *Complaints regarding change of conditions of service, etc.*—(1) Every complaint under section 33A of the Act shall be presented in triplicate in Form I and shall be accompained by as many copies of the complaint as there are opposite parties to the complaint.

(2) Every complaint under sub-rule (1) shall be verified at the foot by the workmen making it or by some other person proved to the satisfaction of the Labour Court or Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify by references to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

61. *Application under section* 33.—(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of section 33 shall present an application in Form J in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal as the case may be, of any action taken by him under clause (*a*) or clause (*b*) of sub-section (2) of section 33 shall present an application in Form K in triplicate to such Conciliation Officer, Board Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered

paragraphs of the application, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

62. *Protected Workmen.*—(1) Every registered trade union connected with an industrial establishment, to which the Act applies shall communicate to the employer, before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4) recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union in writing, within fifteen days of the receipts of the names and addresses under sub-rule (1), the list of workmen recognised as protected workmen.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen.

Provided that, where there is more than one registered trade union in the Establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it.

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of 'protected workmen' under this rule, the dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final.

63. *Application for recovery of dues.*—An application under section 33 (*c*) shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government in the Labour Department.

64. *Appointment of Commissioner.*—Where it is necessary to appoint a Commissioner under under sub-section (3) of section 33C of the Act, the

Labour Court may appoint a person with experience in the particular industry, trade or business involved in the industrial dispute or a person with experience as a judge of a Civil Court, or as a stipendiary magistrate or as a Registrar or Secretary of a Labour Court, or Tribunal constituted under any Provincial Act or State Act or of a Labour Court, or Tribunal constituted under the Act or of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950.

65. *Fees for the Commissioner, etc.*—(1) The Labour Court shall, after consultation with the parties, estimate the probable duration of the enquiry and fix the amount of the Commissioner's fees and other incidental expenses and direct the payment thereof, into the nearest treasury, within a specified time, by such party or parties and in such proportion as it may consider fit. The Commission shall not issue until satisfactory evidence of the deposit into the treasury of the sum fixed is filed before the Labour Court;

Provided that the Labour Court may from time to time direct that any further sum or sums be deposited into the treasury within such time and by such parties as it may consider fit:

Provided further that the Labour Court may in its discretion, extend the time for depositing the sum into the treasury.

(2) The Labour Court may, at any time, for reasons to be recorded in writing, vary the amount of the Commissioner's fees in consultation with the parties.

(3) The Labour Court may direct that the fees shall be disbursed to the Commissioner in such instalments and on such dates as it may consider fit.

(4) The undisbursed balance, if any, of the sum deposited shall be refunded to the party or parties who deposited the sum in the same proportion as that in which it was deposited.

66. *Time for submission of report.*—(1) Every order for the issue of a Commission shall appoint a date, allowing sufficient time, for the Commissioner to submit his report.

(2) If for any reason the Commissioner anticipates that the date fixed for the submission of his report is likely to be exceeded, he shall apply, before the expiry of the said date, for extension of time setting forth grounds thereof and the Labour Court shall take such grounds into consideration in passing orders on the application;

Provided that the Labour Court may grant extension of time notwithstanding that no application for such extension has been received from the Commissioner within the prescribed time limit.

67. *Local Investigation.*—In any industrial dispute in which the Labour Court deems a local investigation to be requisite or proper for the purpose of commuting the money value of a benefit, the Labour Court may issue a Commission to a person referred to in rule 64 directing him to make such investigation and to report thereon to it.

68. *Commissioner's Report.*—The Commissioner after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him to the Labour Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute, but the Labour Court, or with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally before the Labour Court regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Labour Court is for any reason dissatisfied with the proceedings of the Commissioner it may direct such further enquiry to be made as it shall think fit.

69. *Powers of Commissioner.*—Any Commissioner appointed under these rules may, unless otherwise directed by the order of appointment:—

(*a*) examine the parties themselves and any witnesses whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of enquiry:

(*c*) at any reasonable time enter upon or into any premises mentioned in the order.

70. *Summoning of Witnesses, etc.*—(1) The provisions of the Code of Civil Procedure 1908 (Act V of 1908) relating to the summoning, attendance, examination of witnesses and penalties to be imposed upon witness, shall apply to persons required to give evidence or to produce documents before the Commissioner under these rules.

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the sum deposited under rule 65 of an allowance for expenses incurred by him in accordance with the scale for the time being in force for payment of such allowance to witnesses appearing in the civil courts.

71. *Representation of Parties before the Commissioner.*—The parties to the industrial dispute shall appear before the Commissioner either in person or by any other person who is competent to represent them in the proceedings before the Labour Court.

72. *Notice of Strike.*—(1) The notice of strike to be given by workmen in a public utility service shall be in Form L.

(2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter.

73. *Notice of Lockout.*—The notice of lock-out to be given by an employer carrying on a public utility service shall be in Form M.

74. *Report of Lock-out or Strike.*—The notice of lock-out or strike in a public utility service to be submitted by the employer under sub-section (3) of section 22, shall be in Form N.

75. *Report of Notice of Strike or Lockout.*—The report of notice of a strike or lock-out to be submitted by the employer under sub-section (6) of section 22 shall be sent by registered post or given personally to the Conciliation Officer appointed for the area concerned, with copy by registered post to :—

(1) The Secretary to the Government in the Labour Department.
(2) The Labour Commissioner.
(3) The District Magistrate concerned.

76. *Register of Settlements.*—The Conciliation Officer shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose as in Form O.

77. *Notice of Retrenchment.*—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 78 and 79), he shall give notice of such retrenchment as in Form P to the State Government and such notice shall be served on that Government by registered post in the following manner:—

(*a*) Where notice is given to the workman notice of retrenchment shall be sent within three days from the date on which notice is given to the workman;

(*b*) Where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and

(*c*) Where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the State Government at least one month before such date:

Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to State Government within three days of the agreement.

78. *Maintenance of seniority list of workmen.*—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged, according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

79. *Re-employment of retrenched workmen.*—(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange

for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter :

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in rule 78 the number of such seniormost workmen being double the number of such vacancies :

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

(2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule:

Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to any one of the workmen mentioned in the list prepared under rule 78.

80. *Penalties.*—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

81. *Repeal.*—The Industrial Disputes (Mysore) Rules, 1951 are hereby repealed :

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

SCHEDULE

FORM A.

(*See* Rule 3).

Form of application for the reference of an industrial dispute to a Board of
Conciliation
Court of Enquiry
Labour Court
Tribunal

under section 10 (2) of the Industrial Disputes Act, 1947.

Whereas an industrial dispute is apprehended / exists between............and......
......................and it is expedient that the matters specified in the enclosed / the dispute investigation and settlement

statement which are connected with or relevant to the dispute should be referred for to enquiry
adjudication
by a Board of Conciliation
a Court of Enquiry
a Labour Court
a Tribunal

an application is hereby made under sub-section (2) of section 10 of the Industrial Disputes Act, 1947, that the said matters / said disputes should be referred to

a Board of Conciliation
a Court of Enquiry
a Labour Court
a Tribunal

This application is made by the undersigned who have / has been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the..................................held on the..........................19...........

A statement giving the particulars required under rule 3 of the Industrial Disputes (Mysore) Rules, 1957, is attached.

Dated the.......................... Signature of the applicant(s)

To

The Secretary to the Government of Mysore,
in charge of Labour Department.

Statement required under rule 3 of the Industrial Disputes (Mysore) Rules, 1957 to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 :—

(*a*) Parties to the dispute including the name and address of the establishment or undertaking involved.
(*b*) Specific matters in dispute.
(*c*) Total number of workmen employed in the undertaking affected.
(*d*) Estimated number of workmen affected or likely to be affected by the dispute.
(*e*) Efforts made by the parties themselves to adjust the dispute.

FORM B.

(*See* Rule 6).

Whereas an industrial dispute has arisen / is apprehended between....................and ....and it is expedient to refer the said dispute under section 10 of the Industrial Disputes Act, 1947 to a Board of Conciliation for the purpose of

investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the undersigned not later than the...........the name(s) and address(es) of one (two) person(s) whom you wish to recommend for appointment as your representative(s) on the said Board.

If you fail to make the recommendation by the date specified above, the State Government will select and appoint such person(s) as it thinks fit to represent you.

Secretary to Government,
in charge of Labour Department

FORM C.

(*See* Rule 7).

AGREEMENT

[Under section 10A of the Industrial Disputes Act, 1947]
Between

Names of Parties.

Representing employers :
Representing workmen :

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of...
[here specify the name(s) and address(es) of the arbitrator(s)] :

(i) Specific matters in dispute.
(ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved.
(iii) Name of the Union if any, representing the workmen in question :
(iv) Total number of workmen employed in the undertaking affected :
(v) Estimated number of workmen affected or likely to be affected by the disputes.

Where applicable, we further agree that the majority decision of the arbitrators shall be binding on us.

Signature of the Parties :
Representing Employers :

Witnesses
(1)
(2)

Representing workmen :

Copy to :

(i) The Conciliation Officer (here enter office address of the Conciliation Officer in local area concerned).
(ii) The Assistant Commissioner of Labour.
(iii) The Labour Commissioner in Mysore, Bangalore.
(iv) The Secretary to the Government of Mysore in charge of Labour Department.

FORM D.

(*See* Rule 17).

Whereas an industrial dispute between......and......has been referred to this

Board of Conciliation for investigation and settlement
Court of Enquiry for investigation
Labour Court/Tribunal
for adjudication

under section 10 of the Industrial Disputes Act, 1947, you are hereby summoned to appear before the Board/Court/Labour Court/Tribunal in person on the..........................day of..........................at.................................O'clock in the..................noon to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by this Board/Court/Labour Court/Tribunal.

Dated........................

Chairman/Secretary, Board of Conciliation / Court of Enquiry

or

Presiding Officer/Secretary, Labour Court / Tribunal

FORM E.

(*See* Rule 35).

Notice of Change to be given by an Employer.

Name of employer..................................Address...............................

Dated the.........day of....................19......

To

The Secretary/Principal Officer of the Union Association.

The workman/workmen affected.

Dear Sir/Madam,

In accordance with section 9A of the Industrial Disputes Act, 1947, I/We beg to inform you that it is my/our intention to effect the change/changes specified in the annexure to this letter, with effect from..........................

Yours faithfully,

Signature....................

Name..........................

Designation.................

ANNEXURE

(Here specify the change/changes intended to be effected).

FORM F.

(*See* Rule 37).

Before *(here mention the authority concerned)*

Reference No.........................of..

.... Workmen

versus

.... Employer

In the matter of..

I/We hereby authorise Shri/Sarvashree....................to represent me/us in the above matter.

Dated this..day of..........................19......

Signature of person(s)
nominating the representative(s)
Address.

Accepted.

Signature of representative(s)

Address.

FORM G.

(*See* Rule 48).

Form of Nomination Paper

Name of Industrial Establishment	Group/Section/Shop/Department

I nominate *(Here enter the name of the workmen's representative eligible for election)*

a candidate for election to the Works Committee. He is eligible as a voter in the constituency for which he is nominated.

Date .... Signature of proposer.

I agree to the proposed nomination.

Date .... Signature of Candidate.

Attested by : (1)

(To be signed by any two voters belonging to the electoral constituency).

(2)

FORM H.

(*See* Rule 58).

Form for Memorandum of Settlement

Names of parties—

Representing employer (s):

Representing workmen :

Short recital of the case

Terms of settlement

Witnesses :

(1) ....Signature of the parties....................

....

(2) ....

....

*Signature of Conciliation Officer / Board of Conciliation

Copy to : ‡(1) Conciliation Officer

(Here enter the office address of the Conciliation Officer in the local area concerned.)

(2) Assistant Labour Commissioner...................................

(3) The Labour Commissioner in Mysore, Bangalore

(4) The Secretary to the Government of Mysore in charge of Labour Department.

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*In cases of settlements effected by Conciliation Officer / Board of Conciliation

‡In cases where settlements are arrived at between the employer and his workmen otherwise than in the course of conciliation proceeding.

FORM I.

(*See* Rule 60).

Before the Labour Court / Tribunal ....Complaint under Section 33-A of the Industrial Disputes Act, 1947.

A.. Complainant(s)

Address :

Versus

B.. Opposite Party(ies)

Address :

In the matter of Reference No. ....

The petitioner(s) begs/beg to complain that the Opposite Party(ies) has have been guilty of a contravention of the provisions of Section 33 of the Industrial Disputes Act, 1947 (XIV of 1947) as shown below :

(Here set out briefly the particulars showing the manner in which the alleged contravention has taken place and the grounds on which the order or act of the Management is challenged).

The complainant(s) accordingly prays/pray that the Labour Court / Tribunal may be pleased to decide the complaint set out above and pass such order or orders thereon as it may deem fit and proper.

The number of copies of the complaint and its annexures required under rule 59 of the Industrial Disputes (Mysore) Rules, 1957, are submitted herewith.

Signature of the Complainant(s)

Dated this...........................day of.........195 .

Verification

I do solemnly declare that what is stated in paragraphs............above is true to my knowledge and that what is stated in paragraphs......... ..above is stated upon information received and believed by me to be true. This verification is signed by me at on..................day of............ .....19 ,

Signature/or Thumb impression of the person verifying.

FORM J.

[*See* Rule 61 (1)].

Before (here mention the Conciliation Officer, Board, Labour Court or Tribunal).

Application for permission under sub-section (1) of / sub-section (3) of section 33 of the Industrial Disputes Act, 1947 (XIV of 1947), in the matter of Reference No........................

A................................Applicant.

Address :—

Versus

B................................Opposite Party(ies)

Address(es) :—

The above mentioned applicant begs to state as follows: —

(Here mention the action specified in clause (*a*) or clause (*b*) of sub-section (1) and the grounds on which the permission is sought for).

The applicant therefore prays that express permission may kindly be granted to him to take the following action, namely :—

[Here mention the action specified in clause *(a)* or clause *(b)* of $\frac{\text{sub-section (1)}}{\text{sub-section (3)}}$ of section 33.]

Signature of the applicant

Dated this......................day of..................195 .

Space for verification.

(Signature of the person verifying)

Date (on which the verification was signed)..

Place (at which the verification was signed)..

FORM K.

[*See* Rule 61 (2)].

Before (here mention the Conciliation Officer, Board, Labour Court or Tribunal).

Application under sub-section (2) of section 33 of the Industrial Disputes Act, 1947 (XIV of 1947) in the matter of Reference No..............

A.............................Applicant

Address :

Versus

B.............................Opposite Party(ies)

Address(es) :—

The abovementioned applicant begs to state as follows :—

(here set out the relevant facts and circumstances of the case.)

*The workman/workmen discharged/dismissed under clause (b) of sub-section (2) of section 33 has/have been paid wages for one month.

The applicant prays that the Conciliation Officer/Board/Labour Court/ Tribunal may be pleased to approve of the action taken, namely :—

[here mention the action taken under clause (a) or clause (b) of sub-section (2) of section 33].

Signature of the applicant

Dated this.....................day of..................195 .

Space for verification.

(Signature of the person verifying)

Date (on which the verification was signed)..

Place (at which the verification was signed)..

....

*Delete, if not applicable.

FORM L.

(*See* Rule 72).

Form of notices of strike to be given by employee(s) in a public utility service

Name of Union

Names of elected representatives of employees where no trade union exists.

Address

Dated the.......................day of.....................19 .

To

(The name of the employer).

Dear Sir/Sirs,

In accordance with the provisions contained in sub-section (1) of section 22 of the Industrial Disputes Act, 1947, $\frac{\text{I}}{\text{We}}$ hereby give you notice that

$\frac{\text{I propose to call a strike}}{\text{We propose to go on strike}}$ on..............19 .

for the reasons explained in the annexe.

Yours faithfully,

Secretary of the Union

Representative of the employees elected at a meeting held on

ANNEXE

Statement of the Case.

Copy to: (1) Conciliation Officer

(Here enter office address of the Conciliation officer in the local area concerned)

(2) Asst. Commissioner of Labour...............

(3) The Labour Commissioner in Mysore, Bangalore.

FORM M.

(*See* Rule 73).

From of notice of lock-out to be given by an employer carrying on a public utility service

Name of employer...Address.......................
....

Dated the...day of.......................19 .

To

(The Secretary of the Union, if any).

Dear Sir,

In accordance with the provisions of sub-section (2) of section 22 of the Industrial Disputes Act, 1947, I/we hereby inform you that it is my/our intention to effect a lock-out with effect from..............for the reasons explained in the annexe.

Yours faithfully.

*

*Here insert the position which the person who signs the letter holds with the employer issuing this letter.

ANNEXE

Statement of the case.

Copy to (1) Conciliation Officer.

(Here enter office address of the Conciliation Officer in the local area concerned.)

(2) Asst. Commissioner of Labour ....

(3) The Labour Commissioner in Mysore, Bangalore.

FORM N.

(*See* Rule 74)

Form of Report of Strike or Lock-out in a public utility service

Information to be supplied in this form immediately on the occurrence of a strike or lock-out in a public utility service to the Conciliation Officer for the local area concerned.

Name of under-taking	Station and District	Normal working strength	Number of Workers involved		Strike or lock-out	Date of commencement of strike or lock-out	Cause	Was notice of strike or lock-out given: if so, on what date and for what period	Is there any permanent agency or agreement in the undertaking for the settlement of disputes between the employer and workmen? If any exist, particulars thereof	Any other information
			Directly	Indirectly						
1	2	3	4	5	6	7	8	9	10	11

NOTE:—Column (3). Give the average number of workmen employed during the month previous to the day on which the strike or lock-out occurred. While reckoning the average, omit the days on which the attendance was not normal for reasons other than individual reasons of particular workmen. Thus days on which strike or lock-out occurs or communal holiday is enjoyed by a large section of workers should be omitted.

Column (4). If say, 200 workers in a factory strike work and in consequence the whole factory employing 1,000 workers has to be closed then, 200 should be shown under "directly" and the remaining under "indirectly". If the strike of 200 workers does not affect the working of the other departments of the factory, the number of workers involved would only be 200, which figure should appear under 'directly' and column "indirectly" would be blank.

Column (8). Give the main causes of the disputes as well as the immediate cause that led to the strike or lock-out.

FORM O.

(*See* Rule 76)

Register—Part I

Serial No	Industry	Parties to the settlement	Date of settlement	Remarks*

*Whether the settlement was effected at the intervention of the conciliation machinery, or by mutual negotiations between the parties, may be indicated here.

Part II

(Should contain one copy each of the settlements in the serial order indicated in Part I.)

FORM P.

(*See* Rule 77)

Form of notice of retrenchment to be given by an employer under clause (c) of section 25F of the Industrial Disputes Act, 1947.

Name of employer..................................Address..............................

Dated the..............................day of......................195 .

To

The Secretary to the Government of Mysore
in charge of Labour Department.

Sir,

Under clause (c) of section 25F of the Industrial Disputes Act, 1947 (XIV of 1947), I/We hereby inform you that I/We have decided to retrench——‡—— workmen with effect from the————$ for the reasons explained in the annexe.

2. †The workmen concerned were given on the.........195 , one month's notice in writing as required under clause (a) of section 25F of that Act/ Retrenchment is being effected in pursuance of an agreement, a copy of which is enclosed./ The workmen were given on the.........195 , one month's pay in lieu of notice, as required under clause (a) of section 25 F of that Act.

3. The total number of workmen employed in the industrial establishment is *** and and the total number of those who will be affected by the retrenchment is given below :—

Category or designation of workmen to be retrenched (1)	Number of workmen	
	Employed (2)	To be retrenched (3)

4. I/We hereby declare that the workman/workmen concerned has/have been/will be paid Compensation due to them under Section 25F of the Act, on the expiry of the notice period.

Yours faithfully,
F

ANNEXE

Statement of reasons.

Copy to (i) Conciliation Officer

(Here enter office address of the Conciliation Officer in local area concerned).

Assistant Commissioner of Labour.

‡ Here insert the number of workmen.

$ Here insert the date.

† Delete the portion which is not applicable.

F Here insert the position which the person who signs this letter holds with the employer issuing the letter.

***Here insert the total number of workmen employed in the industrial establishment.

THE ORISSA MATERNITY BENEFIT (AMENDMENT) ACT, 1957

ORISSA ACT 12 OF 1957

[*Received the assent of the Governor on July 9, 1957.*] *

An Act to amend the Orissa Maternity Benefit Act, 1953

Whereas it is expedient to amend the Orissa Maternity Benefit Act, 1953, in the manner hereinafter appearing ;

It is hereby enacted by the Legislature of the State of Orissa in the Eighth Year of the Republic of India as follows :—

1. *Short title and commencement.*—This Act may be called the Orissa Maternity Benefit (Amendment) Act, 1957.

(2) It shall come into force at once.

2. *Amendment of section 2, Orissa Act XIX of 1953.*—After clause (*c*) of section 2 of the Orissa Maternity Benefit Act, 1953 (hereinafter referred to as the said Act), the following new clause shall be added, namely :—

"(*d*) 'miscarriage' means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy."

3. *Insertion of new section 3-A, Orissa Act XIX of 1953.*—After section 3 of the said Act, the following new section shall be inserted, namely :—

"3-A. Except as otherwise expressly provided in any other law for the time being in force the State Government may, after giving notice of their intention so to do, by notification, from time to time, direct that the provisions of this Act shall apply to such other establishment or establishments as may be specified in the said notification."

*Orissa Gazette, Extry., 18-7-57.

4. *Amendment of section 4, Orissa Act XIX of 1953.*—In section 4 of the said Act, for the words "four weeks", the words "six weeks" shall be substituted.

5. *Amendment of section 5, Orissa Act XIX of 1953.*—In section 5 of the said Act—

(*i*) in sub section (1), for the words "four weeks", the words "six weeks" shall be substituted ;

(*ii*) in sub-section (2), for the words "seven weeks", "three weeks" and "four weeks", the words "twelve weeks", "six weeks" and "six weeks" shall respectively be substituted.

6. *Amendment of section 6, Orissa Act XIX of 1953.*—In section 6 of the said Act—

(*i*) in sub-section (1), for the words "one month", the words "six weeks" shall be substituted ; and

(*ii*) in sub-section (2), for the words "four weeks", the words "six weeks" shall be substituted.

7. *Insertion of new section 6-A after section 6, Orissa Act XIX of 1953.*—After section 6 of the said Act, the following new section shall be inserted, namely:—

"6-A. Except as otherwise expressly provided in any other law for the time being in force, a woman worker shall be employed on light work during the period of one month prior to her proceeding on maternity leave under the preceding section and shall be entitled to—

(1) leave with wages for six weeks from the date of her miscarriage and shall be paid in accordance with the rates specified in sub-section (1) of section 5;

(2) further leave with wages for a maximum period of one month in case if illness arising out of pregnancy or confinement in addition to the maternity leave for a period of twelve weeks :

Provided that the wages for such further leave shall be regulated by the law governing the factory or the establishment in which she works ;

(3) in the event of her having a child whom she is nursing to two periods of rests of half-an-hour each during her working hours for purposes of such nursing in addition to regular intervals for rest ;

(4) a medical bonus of rupees ten only during the period she is on maternity leave if no pre-natal confinement and post-natal care is provided to her by the employer free of charge."

8. *Amendment of section 8, Orissa Act XIX of 1953.*—In section 8 of the said Act—

In sub-section (1), after the words "it shall not be lawful for her employer", the words "to do anything that might prejudice her service conditions, or" shall be inserted.

I have already observed in para. 4 above that the petitioner had already exercised validly his option on 7th November, 1950. He had informed the relevant authority of his election and that was sufficient. To fill in an "election form" was not necessary as it had not been prescribed anywhere. It was in compliance with Railway Board's letter No. E47CPC/10 dated 22nd September, 1950, that the petitioner's presumptive pay in the post-1931 scales of pay was worked out and he was asked to send his application to receive the benefit of these orders. In fact, he is one of "the Railway staff who has been benefited by the orders contained in Railway Board's letter dated 22nd September, 1950" within the meaning of the President's orders contained in the Railway Board's letter No. E47CPC/10 of 11th April, 1953.

In this view of the matter, I would set aside the order of the District Court and restore that of the Authority under the Payment of Wages Act. No order as to costs.

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[IN THE MADRAS HIGH COURT.]

AMBI'S CAFE

v.

THANGAVELU AND ANOTHER.

Rajagopalan, J.

February 7, 1957.

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INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 33, 33A—SCOPE OF—INTERIM SUSPENSION OF WORKMAN—WHETHER CONTRAVENES SECTION 33—APPLICATION UNDER SECTION 33A—WHETHER LIES—JURISDICTION OF TRIBUNAL UNDER SECTION 33—SCOPE OF ENQUIRY BY TRIBUNAL—QUANTUM OF PUNISHMENT—WHETHER RELEVANT.

Suspension of a workman during the pendency of an enquiry into misconduct committed by him as also pending permission of the Tribunal under the Industrial Disputes Act, 1947, cannot be considered as a punishment, and does not fall within the scope of section 33 of the Act. The suspended workman cannot apply to the Industrial Tribunal under section 33A and the Tribunal will not have jurisdiction to deal with such an application because it is only a contravention of section 33 of the Act which gives the workman the right to apply under section 33A.

In dealing with an application under section 33 of the Industrial Disputes Act, 1947, the Tribunal has only to see whether a prima facie case has been made out by the employer for lifting the ban imposed by the section and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair *labour practice or victimisation. The Tribunal is not entitled to sit in judgment over the action of the employer if once it comes to the conclusion that a prima facie case has been made out to deal out punishment to the workman. Neither the quantum of punishment proposed to be meted out by the employer nor the interim suspension of the workman is a relevant factor in deciding whether the permission sought by the management should be accorded or withheld.*

Writ Petition No. 562 of 1956.

V. Thiagarajan and *M. Ramachandran* for the petitioner.

K. V. Sankaran for the respondents.

JUDGMENT.

The first respondent Thangavelu and one Venkatachalam were employees of the petitioner, a proprietary concern, running a hotel with boarding and lodging facilities. The first respondent was one of the permanent employees. On 10th October, 1953, there was a quarrel between these two employees when from words they passed to blows. The management, no doubt, came to know about it the same day, and there was even an attempt made to get the police to intervene to stop the fight. On 11th October, 1953, two of the guests of the hotel complained to the management about the inconvenience caused to them by the unedifying quarrel between the first respondent and Venkatachalam. The management called upon both the workmen to explain their conduct, and pending an enquiry into the charges, both were placed under suspension the same day. It was common ground that at that time an appeal was pending before the Labour Appellate Tribunal, preferred against the award of the Industrial Tribunal in an industrial dispute between the management and the workers. Therefore, the management applied to the Appellate Tribunal under section 22 of the Industrial Disputes (Appellate Tribunal) Act (Act XLVIII of 1950), for permission to dismiss or discharge the two employees Thangavelu and Venkatachalam. The date of that application was given as 26th October, 1953, in the order of the Chairman of the Central Government Industrial Tribunal, to whom that application was transferred for disposal. Thangavelu in his turn preferred an application on 3rd November, 1953, under section 23 of Act XLVIII of 1950, complaining that he had been dismissed from the service of the management in contravention of section 22 of the Act.

Both the petitions were heard together. The Chairman, the second respondent in these proceedings, dismissed the application preferred by the management under section 22 of the Act. He allowed the application preferred by Thangavelu under section 23 of the Act and directed his reinstatement and the payment to him of what the Chairman called a nominal compensation of Rs. 250.

The petitioner applied under Art. 226 of the Constitution for the issue of a writ of *certiorari* to set aside the orders of the second respondent dated 14th February, 1956.

The validity of the order of the second respondent was attacked on the following grounds: (1) The Tribunal had no jurisdiction to enquire into the application presented by Thangavelu under section 23 of the Act. There was no contravention of section 22. The interim suspension ordered by the management on 11th October, 1953, did not fall within the scope of the acts prohibited by section 22. (2) The Tribunal had no jurisdiction to order the reinstatement of Thangavelu and it had no jurisdiction either to order the payment of any compensation to Thangavelu; and (3) The Tribunal erred in the exercise of its jurisdiction in dismissing the application preferred to it by the management under section 22 of the Act.

The first of the contentions of the learned counsel for the petitioner, that in the absence of an established violation of the provisions of section 22 of the Act, the Tribunal had no jurisdiction to proceed with an enquiry on an application purported to be presented under section 23 of the Act, is well founded in the circumstances of this case and should prevail. That there was a quarrel between Thangavelu and Venkatachalam, two employees of the petitioner, on 10th October, 1953, was common ground. All that the management did on 11th October, 1953 was to start disciplinary proceedings against the two employees by issuing a notice to them to show cause why they should not be punished. Pending that enquiry they were placed under immediate suspension. The Tribunal itself recorded in paragraph 8 of its order:

"Thus I am convinced from the evidence and the arguments of the representatives that the exchange of blows between the workers had caused some annoyance to the inmates of the hotel."

Despite the fact that the charge against Thangavelu that he had participated in a quarrel with Venkatachalam on 10th October, 1953, had been established, the management could not punish Thangavelu except with the permission of the Appellate Tribunal obtained in conformity wtih the requirements of section 22 of the Act. The management preferred that application without any unreasonable delay. The application was dated 18th October, 1953, though, as I pointed out earlier, the Tribunal treated the application as having been preferred on 26th October, 1953. The contention of the learned counsel for the petitioner that the suspension of Thangavelu ordered by the management did not, in the circumstances of this case, constitute a contravention of the provisions of section 22 is well founded. In *Lakshmi Devi Sugar Mills Ltd.* v. *Pandit Ram Sarup and others* [1956] 11 F.J.R. 273, in the Supreme Court, Bhagwati, J., restated the principles laid down by the Tribunals in the earlier cases, *Champadany Jute Mills* v. *Certain Workmen*, [1952] I L.L.J. 554, *Joint Steamer Companies* v. *Their Workmen*, [1954] 2 L.L.J. 221, *Assam Oil Co. Ltd.* v. *Appalaswami*, [1954] 9 F.J.R. 213 and *Standard Vacuum Oil Co.* v. *Gunaseelan, M.G. and others*, [1954] 2 L.L.J. 656. Bhagwati J. observed:

"It has been rightly held......that suspension without pay pending an enquiry as also pending permission of the Tribunal under the relevant section could not be considered a punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal passed orders thereupon.......”

The learned Judge observed further:

“Suspension under such circumstances, therefore, could not be a punishment even though it may be of an indefinite duration and would not attract the operation of section 22 of the Act. It could not be contended, therefore, that suspension without pay even for an indefinite period pending enquiry or pending the permission of the appropriate Tribunal to dismiss the workman would be a punishment which would require permission under section 22 of the Act before the same could be meted out to the workman.”

It is only contravention of section 22 that gives the workman a right to apply to the Tribunal under section 23 of the Act. When there was no contravention of section 22 in this case the suspension ordered by the management on 11th October, 1953, did not constitute a contravention of section 22 and the Tribunal had no jurisdiction to proceed with the enquiry into the application preferred under section 23 of the Act.

The view taken by the Tribunal that the suspension of Thangavelu constituted a termination of his services, and that constituted a contravention of section 22, is wrong. As pointed out by the Supreme Court, suspension did not amount to a termination of the services. It is not every break in the continuity of the service of a workman that comes within the scope of section 22 of the Act.

The order of the Tribunal passed on the application preferred under section 23 of the Act, directing the re-instatement of Thangavelu and directing further the payment of compensation to him, was without jurisdiction and is therefore liable to be set aside.

In view of what I have recorded earlier, it is not necessary to deal with the second of the contentions of the learned counsel for the petitioner, that even on an application maintainable in law under section 23 of the Act, the Tribunal had no jurisdiction to order either the re-instatement of the worker or the payment of compensation to him. The learned counsel no doubt referred to *J. K. Hosiery Factory* v. *Labour Appellate Tribunal*, [1956] 11 F.J.R. 67, where the learned Judge held that under section 23 the Tribunal had no power to award compensation for the infringement of the provisions of section 22. It may not be necessary for the disposal of the case before me to go into the soundness or otherwise of the proposition laid down by the learned Judge.

There remains the rejection of the application preferred by the management under section 22 of the Act, the validity of which also the petitioner challenged.

The scope of the power of the Tribunal under section 22 of the Act to accord the sanction sought by an employer or to with-hold it was defined

by the Supreme Court in *Automobile Products of India Ltd.* v. *Rukmaji Bala and others*, [1955] 7 F.J.R. 716, and was restated by Bhagwati, J. in *Lakshmi Devi Sugar Mills Ltd.* v. *Pandit Ramsarup and others*, to which I have already referred. In *Automobile Products of India Ltd.* v. *Rukmaji Bala and others*, [1955] 7 F.J.R. 716, Das, J., referred to an earlier decision of the Supreme Court in *Atherton West and Co. Ltd.* v. *Suti Mills Mazdoor Union and others*, [1953] 5 F.J.R. 83. In *Lakshmi Devi Sugar Mills Ltd.* v. *Pandit Ram Sarup and others*, Bhagwati, J., pointed out:

“The Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings there in referred to should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting *mala fide* or is not resorting to any unfair practice or victimization. It cannot impose any conditions on the employer before such permission is granted nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf.”

The learned Judge observed further:

“The Tribunal before whom such an application for permission is made under section 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a *prima facie* case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was *bona fide* or was actuated by the motive of victimization......If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case the dealing out of such punishment by the employer to the workman after such permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal under section 22 of the Act would be to either grant the permission or to refuse it.”

It is on an application of this principle that I have to decide the issue whether the Tribunal erred in the exercise of its jurisdiction by refusing the permission sought by the petitioner-management in this case.

I have already pointed out that the fact that Thangavelu and Venkatachalam had a quarrel within the permises of the hotel on 10th October, 1953, was never in dispute. In paragraph 8 of its order, the Tribunal recorded :

"......I believe that it is true that both the workers began exchange of words resulting in exchange of blows which naturally might have caused annoyance to the two boarders who were staying in the room of the cafe close by."

After pointing out that the Tribunal did not doubt the *bona fides* of the residents of the hotel when they preferred a complaint to the management the Tribunal recorded :

"Thus I am convinced from the evidence and arguments of the representatives that the exchange of blows between the workers had caused some annoyance to the inmates of the hotel."

Having reached that conclusion, the Tribunal had to consider whether that constituted a *prima facie* case for the management to punish Thangavelu. It was certainly not for the Tribunal to consider whether a dismissal was an appropriate punishment in the circumstances of the case. The Tribunal certainly went wrong when it observed in paragraph 9 of its order:

"The only question with which I am concerned at present is whether the circumstances of the case and the part played by Sri Thangavelu in the incident merit the punishment of dismissal."

No doubt the Tribunal also observed :

"I have absolutely no hesitation in arriving at the conclusion that the management has not established a *prima facie* case for permission to dismiss the workman."

But obviously it is with reference to the quantum of punishment that this observation was made, that a *prima facie* case had not been made out. The quantum of punishment proposed to be meted out by the management was not a relevant factor at all.

The Tribunal appears to have been obsessed with the suspension ordered by the management, a suspension pending enquiry and pending disposal of the application the management intended prefer under section 22 of the Act the Tribunal. I have already dealt with the erroneous view taken by the Tribunal, that the suspension was a punishment which constituted a termination of Thangavelu's services in contravention of section 22. The Tribunal was also of the view, that the suspension ordered by the management violated the principles of natural justice. It is a little difficult to sustain that finding. The Tribunal obviously overlooked the fact that the suspension ordered by the management did not constitute a punishment at all. It was a wrong view point the Tribunal took, that suspension was a punishment and that the punishment was inflicted violating the principles of natural justice. That led to the conclusion that the management did not act *bona fide* in applying to the Tribunal under section 22 of the Act. In paragraph 11 the Tribunal recorded :

"I do not for a moment discredit the management for respecting the sentiments of the customers who raised certain complaints against two workmen but I do not approve the 'indecent haste' with which action was taken against the worker Thangavelu which resulted in effect in the termination of the services of the worker depriving him of the human needs of food and shelter."

Once again I have to point out that the interim suspension ordered by the management in the circumstances of this case could not be a relevant factor at all in deciding whether the permission sought by the management should be accorded or withheld. There was no real finding of the Tribunal that the proposed dismissal amounted to victimisation or amounted to any unfair labour practice. There was really no basis for what the Tribunal observed in paragraph 11 :

"I must feel that the management was actuated with ulterior motives......and this incident was only a cloak under which action was taken."

The earlier findings of the Tribunal about the truth of the incident and about the part played by Thangavelu certainly did not warrant this conclusion. The conclusion the Tribunal recorded in paragraph 12 of its order, "I hold that the management has not established a *prima facie* case and there was no *bona fides*", as the basis on which permission was refused was not really supported by the evidence on record and was even inconsistent with the other findings recorded by the Tribunal itself. Equally inconsistent with the conclusion recorded in paragraph 12 was the observation in paragraph 14 of its order:

"Further it is absolutely necessary for the management to enforce discipline and maintain the goodwill of the customers to ensure the prosperity of the coneern."

That fact, however, was taken into account by the Tribunal only to refuse back pay to the worker.

I uphold the contention of the learned counsel for the petitioner, that in the circumstances of this case the Tribunal erred in the exercise of the jurisdiction vested in it by section 22 of the Act by failing to keep in view the real scope of its jurisdiction and also by taking into account irrelevant factors. The order passed by the Tribunal under section. 22 of the Act is also liable to be set aside.

This petition is allowed. The rule is made absolute. No order as to costs.

[IN THE MADRAS HIGH COURT.]

A. ST. ARUNACHALAM PILLAI AND ANOTHER

v.

CHAIRMAN, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, MADRAS AND ANOTHER.

Rajagopala Ayyangar, J.

February 20, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 18(C)—'SUCCESSOR'—MEANING OF -TRANSFER OF ASSET USED IN BUSINESS—TRANSFEREE, WHETHER 'SUCCESSOR' OF TRANSFEROR—SUCCESSION, ESSENTIALS OF.

Where there is a mere transfer of the asset which is used in a business, it does not constitute a transfer of the business of the transferor so as to make the transferee a 'successor' for the purposes of section 18(c) of the Industrial Disputes Act, 1947.

Where the transferee acquired four motor buses and also the route permits in respect of the buses from the transferor who was carrying on business as a motor transport operator with more than ten buses, Held, *that the transfer was not of the entirety of the business so as to make the transferee a 'successor' of the transferor for the purposes of section 18(c) of the Act.*

Writ Petitions Nos. 940 and 960 of 1956.

K. Thirumalai and *V. R. Naganathan* for the petitioners.

S. Swamikannu for second respondent.

JUDGMENT.

W. P. No. 940 of 1956: This is a petition for the issue of a writ of *certiorari* to quash the award of the Chairman, Central Government Industrial Tribunal, Madras. It is necessary to state a few facts to understand the point raised. One Shanmugha Motor Service, Tiruchirapalli, was being conducted by one A. SM. Kandaswami who was carrying on business as a motor transport operator. This concern had ten buses and two spare buses and was employing a number of workmen stated to be about 55. There was a dispute between this concern and the workers in respect of the payment of bonus for the years 1949 to 1951 and also as regards the terms of service of some drivers and conductors employed by this establishment. The matter in dispute was referred by the local Government to an Industrial Tribunal for adjudication, and the Tribunal passed an award on 3rd May, 1952, which was published in the Fort St. George Gazette on 28th May, 1952. The award was substantially in favour of the workmen, granting most of the relief prayed for by them. From this award the management filed an appeal to the Labour Appellate Tribunal—A. S. No. 228 of 1952. The Appellate Tribunal modified in some respects the award as regards bonus, but otherwise confirmed that of the Industrial Tribunal.

Pending the adjudication of the appeal by the Labour Appellate Tribunal, there were certain disputes which arose between the management and the workmen. This consisted of the transfer by the Shanmugha Motor Service of their buses to three parties, one of whom is the petitioner here and another the petitioner in W. P. No. 960 of 1956. Four of the buses were transferred to the petitioner while the other six and the spare buses were transferred to the other two parties. The transfer of these buses was in May, 1952. The workers, when they came to know of the transfer of these buses, appeared before the transport authority and resisted the application for the transfer of the route permits in relation to these buses. The transport authority, however, overruled these objections, and by an order made in June, 1952, allowed the transfer. The transferees have been working the buses on these transferred permits ever since.

Besides this, the workers also filed an application before the Labour Appellate Tribunal, invoking their jurisdiction under section 23 of the Labour Appellate Tribunal Act, and complaining of a violation of section 22 of that Act. That complaint would have meaning only if the conditions of service of the employees had been adversely affected by some action of the employer. The case put forward by the workmen before the Tribunal was that this transfer effected in favour of the petitioner and the two other co-transferees constituted a change in the conditions of service. This application was transferred by the Labour Appellate Tribunal under section 23-A of the Act to the Central Government Industrial Tribunal, Madras, for adjudication. The Tribunal conducted an enquiry and passed an award an 16th July, 1956, under which they directed the managements of the three transferees to pay compensation to ten of the workers who filed the complaint before the Labour Appellate Tribunal.

I have mentioned the fact that the labour force employed by the Shanmugha Motor Service consisted of about 55 workmen. Subsequent to the transfer, the workers approached the Labour Officer and requested his services to effect a conciliation between themselves and the transferees. The workers at that stage appear to have been represented by two Unions, one Union represented 38 workers and the other 12. The Labour Officer suggested certain terms which were accepted by the transferees and by the Union composed of the 38 workmen, and these workmen were absorbed by the three transferees ;. The Union which represented the 12 workmen, however, would not accept the terms suggested by the Conciliation Officer, and it was this Union that preferred the complaint to the Labour Appellate Tribunal which has resulted in the award now impugned.

As I said before, the order of the Central Government Industrial Tribunal conveys a direction to the three transferees as a group to compensate ten of the workmen by paying them five months' salary. It is the validity of this award that is challenged in this writ petition.

Though in the affidavit in support of this writ petition several objections have been taken to the validity of the award, the main, and, in fact, the only point to be considered is whether the transferees are persons who fell within the terms of section 18(c) of the Industrial Disputes Act. The Tribunal has answered this in the affirmative and the question for consideration in this petition is whether that finding is correct. That there was a dispute between the Shanmugha Motor Service and the workers, and that, by reason of the closure of their business, the workmen were left without employment, is not in dispute. But the defence of the transferees was that they were not either the successors or assigns of the Shanmugha Motor Service so as to be bound by any adjudication between themselves and their workmen. The question whether the petitioner and his co-transferees were successors or assigns in respect of the establishment of Shanmugha Motor Service is dependent on whether they are the transferees of that business. The facts found by the Tribunal, however, were only that the petitioners had obtained, by purchase, four of the buses pertaining to the Shanmugha Motor Service. Along with the purchase of the buses, they had transferred to them the route-permits under which the buses could run. The question for consideration is whether this constituted a transfer of the business of the operator—the Shanmugha Motor Service. In reaching a conclusion adverse to the management, the Tribnnal has relied on a decision of mine reported in *Palace Theatre, Salem* v. *Labour Appellate Tribunal of India*, [1955] 9 F.J.R. 385. In that case, however, there had been merely a change in the management of the establishment. That is clear from the passage in that judgment, which I will now extract:

"The next ground upon which the order is impugned is that the present management of the petitioners' establishment came into existence only on 28th April, 1952, and that for the act of the previous management the Tribunal had no power to direct reinstatement of the workers in July, 1952."

It will be seen that this was the contention which I rejected. There, there was no case of a transfer of an asset belonging to a previous employer which was held to constitute the purchaser of the asset a successor to the establishment. On the other hand, the learned counsel for the petitioner relied on another decision of this court reported in *Odeon, Madras* v. *Industrial Tribunal, Madras*, [1954] 6 F.J.R. 543. That case was concerned with the liability of the lessee of a theatre, where the lease comprised only the theatre buildings. The contention urged on behalf of the workers was that, as it was in that theatre that the workmen were employed and did their duties the person who conducted the business in that theatre was a successor or assign of that establishment within the meaning of section 18(c). That contention was repelled by this Court. In my judgment, the present case falls within the principle laid down in *Odeon, Madras* v. *Industrial Tribunal, Madras*, [1954] 6 F.J.R. 543. The case before the Court then was concerned with a lease of the premises. Here, it is the case of a transfer of an asset which is used in the business. No doubt, along with the bus, the permit to enable that bus to run was also transferred. But these do not constitute the

entirety of the business; nor can the transferee of the bus and the permit be treated as a successor in interest of the previous operator.

If the petitioner was not the successor of the Shanmugha Motor Service, it follows that the Tribunal had no jurisdiction to direct payment of compensation to workers, because their employment was only under the Shanmugha Motor Service and there was no relationship of employee and employer between these workers and the present petitioner. The writ petition is allowed, and the order of the Tribunal is set aside, and the rule is made absolute.

There will be no order as to costs.

W. P. No. 960 of 1956:—The petitioner here is another of the transferees and for the reasons already set out in W.P. No. 940 of 1956, the rule will be made absolute and the order of the Tribunal set aside. No order as to costs.

[IN THE MADRAS HIGH COURT.]

KALESWARAR MILLS LTD.

v.

SAKTHIVELU AND OTHERS.

Rajamannar, C.J., and Panchapakesa Ayyar, J.

April 4, 1957.

WRIT—APPLICATION FOR CERTIORARI TO QUASH ORDER OF TRIBUNAL—SCOPE OF—WHETHER WRIT CAN ISSUE ON MATTERS NOT RAISED BEFORE TRIBUNAL—CONSTITUTION OF INDIA, ARTICLE 226.

INDUSTRIAL TRIBUNAL—PROCEDURE—FRAMING OF ISSUES—WHETHER ESSENTIAL.

In an application for a writ of certiorari to quash the order of an Industrial Tribunal, the High Court will not consider questions which were not raised before the Tribunal. It is only when those questions have been raised before the Tribunal and decided by the Tribunal that an application for writ will lie to the High Court by the aggrieved party.

Where the Industrial Tribunal has ascertained the real dispute between the parties and has examined the details of the dispute, the omission to frame formal issues cannot by itself vitiate the order of the Tribunal if the Tribunal has dealt with the contentions raised by the parties before it.

Writ Appeals Nos. 136 to 138 of 1956.

R. M. Seshadri for the appellant.

B. Lakshminarayana Reddi for the respondent.

JUDGMENT.

These are appeals from the judgment of Rajagopala Ayyangar, J., by which he disposed of a batch of writ petitions filed by the appellant before us, the Kaleswarar Mills Ltd., Coimbatore. Several writ petitions were filed by the Mills to quash the orders passed by the Central Government Industrial Tribunal, Madras, directing re-instatement of seven of their workers who had been discharged by them on several dates between 7th September, 1953, and 22nd April, 1954. The seven discharged workmen preferred complaints in writing to the Labour Appellate Tribunal, Coimbatore, under section 23 of the Industrial Disputes (Appellate Tribunal) Act because at that time there was pending before that Appellate Tribunal a dispute between the mills and their workmen. There were also other disputes pending before the Industrial Tribunal, Coimbatore. section 23 provides specifically for cases of discharge during the pendency of a dispute between the Labour Appellate Tribunal, and the workmen evidently availed themselves of this special provision. When a complaint is made under section 23 of the Industrial Dispsute (Appellate Tribunal) Act, that Tribunal is empowered under section 23A of that Act either to dispose of the proceeding itself or by the Chairman or any other member sitting singly or by a transfer of the proceedings to any one of the Industrial Tribunals specified for the disposal of such proceedings by the Central Government by notification in the official Gazette. Acting under this provision, the Appellate Tribunal transferred the seven complaints made by the seven workmen to the Central Government Industrial Tribunal, Madras, for disposal. That Tribunal, after notice to the management and after considering the objections raised by them, passed awards in respect of the seven complaints directing that the discharged workers be re-instated and 50 per cent. of their back wages should be paid to them within the time fixed. It is to quash these two awards that the writ petitions were filed by the mills. They were heard together and disposed of by a common judgment by Rajagopala Ayyangar, J., in and by which he allowed two of the writ petitions and remanded the cases to the Tribunal but dismissed the other five writ petitions. Against this common judgment five writ appeals were filed by the mills. Since the filing of the appeals, there has been a compromise between the management of the mills and two of the workers, and that leaves us with only the above three appeals.

Several contentions were urged before us by Mr. R. M. Seshadri, learned counsel for the appellant-mills. The first is that section 23A of the Industrial Disputes (Appellate Tribunal) Act, was invalid and therefore the transfer of the complaints to the Industrial Tribunal and the further proceedings before the Industrial Tribunal were all void and of no effect. The only ground on which the validity of section 23A was impugned was that under sub-section (4) of that section, no appeal shall lie to the Appellate Tribunal from any order or award of an Industrial Tribunal made in any proceeding transferred to it under that section. We are not called upon in these appeals

to decide whether that sub-section denying the right of appeal is or is not a valid provision. Actually no appeal was filed to the Appellate Tribunal. It may be, if the appellant had filed appeals to the Appellate Tribunal and that Tribunal had held that no appeal lay because of sub-section (4), then it would have been open to the appellant to urge this ground before this court Even assuming that sub-section (4) is not valid because it is discriminatory, that would not make the entire section void. The provision about the appeal is easily and clearly separable from the other provisions of section 23A. There is, therefore, no substance in this contention. The next contention raised was that the Industrial Tribunal did not follow the procedure which it ought to have followed but disposed of the complaints as if they were appeals. Learned counsel laid considerable stress on the fact that no issues were framed. It is true that under section 23A(3) of the Industrial Disputes (Appellate Tribunal) Act, when any proceeding is transferred by the Appellate Tribunal to an Industrial Tribunal, the Industrial Tribunal shall dispose of the proceeding as if it were a proceeding under section 33 or, as the case may be, section 33A of the Industrial Disputes Act, and the provisions of that Act shall apply. Section 33A of the Industrial Disputes Act provides that the Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of that Act. A perusal of the impugned order of the Industrial Tribuual clearly shows, and it has not been denied before us by the appellant, that at no time did the appellant insist on any particular procedure to be followed and there is nothing on record to show that the Industrial Tribunal refused to follow that procedure. For instance, it is not alleged even that the management sought to adduce evidence which was shut out because the Industrial Tribunal took the view that the complaints should be heard and disposed of as if they were appeals and not original applications. It was said that no issues were actually framed. But as was pointed out by the Supreme Court in *J. K. Iron and Steel Co. Ltd.*, [1956] 9 F.J.R. 419 at page 424:

"Now the only point of requiring pleadings and issues is to ascertain the real dispute between the parties, to narrow the area of conflict and to see just where the two sides differ."

We are unable to say that the Tribunal did not ascertain the real dispute between the parties and did not proceed to examine the details of the dispute to find out what relief, if any, should be given to the workmen. The omission to frame formal issues cannot by itself vitiate the order of the Tribunal if it appears—and it does appear to us that the Tribunal did deal with the contentions raised by the parties before it.

Finally, the appellant sought to found an argument on the delay which occurred since the date of the discharge and before the application was filed under section 23 of the Industrial Disputes (Appellate Tribunal) Act. This contention can be disposed of shortly by adverting to the fact that this point was not raised by the management before the Industrial Tribunal. It was not pleaded by them that the workmen were not entitled to relief because of unexplained and avoidable delay. It may be the workers were awaiting the result of negotiations between them and the management as well as the efforts of the Labour Officer to bring about a settlement.

The appeals are dismissed with costs. Advocate's fee Rs. 50, in each appeal.

[IN THE MADRAS HIGH COURT.]

PUBLIC PROSECUTOR

v.

KANHAYALAL FOMRA

Somasundaram, J.

April 12, 1957.

OFFENCES—NON-COMPLIANCE WITH MERE DECLARATION—WHETHER OFFENCE—DISMISSAL OF WORKMAN DECLARED WRONGFUL BY AUTHORITY—NO DIRECTION TO REINSTATE—WHETHER EMPLOYER CAN BE PROSECUTED FOR NON-COMPLIANCE WITH ORDER OF AUTHORITY—MADRAS SHOPS & ESTABLISHMENTS ACT, 1947, SECTION 41 (2) AND (3).

A dismissed employee appealed against his dismissal to the prescribed authority under section 41(2) of the Madras Shops & Establishments Act, 1947. The appellate authority merely declared that the dismissal was wrongful and did not direct that the employee should be reinstated. On a prosecution of the employer under section 41(3) of the Act for non-compliance with the order of the authority, the employer was acquitted on the ground that there could not be a contravention of a mere declaration. On appeal by the State, Held, *that for non-compliance with the provisions of any section, there must be a direction and that there can be non-compliance with a mere declaration. The acquittal of the employer was, therefore, upheld.*

Criminal Appeal No. 671 of 1956.

Public Prosecutor in person.

P. V. Subramaniam for the respondent.

JUDGMENT.

This is an appeal by the State against the acquittal of the respondent by the Fourth Presidency Magistrate in C. C. No. 6220 of 1956.

The accused was a partnership firm represented by a partner, the respondent. One K. S. R. Ayyangar was employed by this firm and he was dismissed. The employee filed an appeal under section 41 (2) of Act XXXVI of 1947, which is the Madras Shops and Establishments Act. The Additional Commissioner for Workmen's Compensation, Madras, who

heard the appeal held that the dismissal was wrongful. Beyond giving his decision that the dismissal was wrongful, there was no further direction given by the Commissioner for Workmen's Compensation to re-instate the employee in service. The accused did not re-instate the employee in service. The Government, therefore, through the Assistant Inspector of Labour, Sixth Circle, Madras, filed a complaint setting out the above facts and prosecuted the accused not under section 41 (1) of the Act for wrongful dismissal, but under section 41 (3) stating that the employer did not comply with the orders passed by the Additional Commissioner for Workmen's Compensation.

Now, section 41(3) of the Act merely says that the decision of the Appellate Authority shall be final and binding on both the employer and the person employed. It is unnecessary to go into the question in this case whether Courts, particularly Criminal Courts, which are asked to convict persons who are brought before them can go into the question of the reasonableness or the unreasonableness of the dismissal and whether the decision of the Appellate Authority is binding on those Courts also. The only question before the trial court as well as before me is whether any offence can be said to have been committed for not complying with the provisions of clause (3) of section 41.

Now, for non-compliance of the provisions of any section, there must be a direction. There can be no non-compliance of a mere declaration. In this case, as rightly pointed out by the learned advocate who appears for the accused, the order passed by the Additional Commissioner for Workmen's Compensation contains merely a declaration that the order of dismissal is wrong. I have held in a similar case in Crl. R. C. No. 240 of 1950 that in the absence of a provision like section 29 of the Industrial Disputes Act, non-compliance of the Commissioner's decision cannot amount to an offence. In fact, in the Industrial Disputes Act, section 29 is as follows:

"If any person commits a breach of any term of any settlement or award which is binding on him under this Act, he shall......be punishable, etc........"

There is no such provision in this Act. So far as section 45 is concerned, it merely refers to a contravention of section 41. A mere declaration that the dismissal is wrongful cannot in the circumstances give rise to any contravention unless following the declaration a direction is given which is not complied with by the party concerned. I am satisfied that in this case no offence under section 41 (3) has been made out.

It is contended by the learned Public Prosecutor that the purport of section 41 (3) is to make the employer re-instate the employee and that it is really holding that an offence has been committed under section 41 (1). If the accused is prosecuted under section 41 (1), certainly he may be liable. But, here the prosecution is not under section 41(1) and when the summons was taken out to the second accused informing him that he has committed an offence under section 41 (3) and nothing also is read out to him at the trial, it was well with in the advocacy of the advocate who appeared for the accused not to trouble himself with the other provisions of the Act but content himself with meeting the particular charge the accused was asked to meet. In my opinion, the charge that was read out to the accused was successfully met and in the absence of any other charge, he had nothing more to do. This is not one of those cases where certain facts are established and the question is what is the offence committed. The only act for which the accused is charged is not implementing the decision of the Additional Commissioner for Workmen's Compensation, which is not an offence, as section 29 makes it in the Industrial Disputes Act.

The acquittal, therefore, is well justified, and the appeal is dismissed.

[IN THE SUPREME COURT OF INDIA.]

KAMLA PRASAD KHETAN AND ANOTHER
v.
UNION OF INDIA.
R. B. KEDAR NATH KHETAN — INTERVENER.

S. R. Das, C.J., Imam, S. K. Das, Govinda Menon and A. K. Sarkar, JJ.

May 1, 1957.

INDUSTRIES (DEVELOPMENT & REGULATION) ACT, 1951, SECTION 18-A— RIGHT OF GOVERNMENT TO APPOINT CONTROLLER TO MANAGE INDUSTRIAL UNDERTAKING—SCOPE OF—CONDITIONS FOR ISSUE OF ORDER TAKING OVER MANAGEMENT—RIGHT TO AMEND ORIGINAL ORDER—APPLICABILITY OF GENERAL CLAUSES ACT, 1897, SECTION 21—APPOINTMENT OF AUTHORISED CONTROLLER—BONA FIDES OF—TESTS.

A notification was issued by the Central Government under section 18A of the Industries (Development and Regulation) Act, 1951, vesting the management of an industrial concern in an Authorised Controller appointed by the Government. This notification was in force for a period of one year and was subsequently amended so as to be in force for a further period of one year. In a petition under article 32 of the Constitution of India, a Director and shareholder of the industrial concern sought to set aside the order of the Government on the grounds:

(i) that the original order did not comply with an essential condition laid down in section 18A of the Act for the issue of such an order, in that the Central Government could not have been of the opinion that the concern was being managed in a manner highly detrimental to the industry or to public interest.

(ii) that even if the original order was valid, section 18A of the Act did not authorise an extension of the period and that the extension so made did not comply with one of the essential requirements of section 21 of the General Clauses Act, 1897; and

(iii) that the order was not bona fide, *in that the Central Government appointed the very person who was mismanaging the undertaking and against whom an order of injunction had been passed by a Court, as the Authorised Controller.*

Held, *on the facts of the case, that,*

(i) the original order of the Central Government complied with all the conditions laid down in section 18-A of the Act and was therefore valid;

(ii) that the Central Government had power to amend the original order and extend the period of operation of the order and that the amending order was in compliance with the provisions of section 21 of the General Clauses Act, 1897; and

(iii) that the selection of a suitable person to be the Authorised Controller rests with the Central Government and it may be presumed that the Government knows best the needs of the particular industry and of its subjects and the suitability of the person appointed. Where the lack of good faith in the Government is pleaded, the test is not whether a better or more independent man was or might be available, nor is it the duty of the Court to subject the selection made by the Government to another independent test as to propriety and suitability; the test is whether the appointment was made for some ulterior purpose, some purpose other than the object of the law under which the order has been made.

The original order of the Central Government and also the subsequent order amending the same were held valid.

Petition No. 54 of 1955.

Purshottam Tricumdas for the petitioners.

C. K. Daphtary for the respondent.

K. L. Misra for the intervener.

JUDGMENT

The following Judgment of the Chief Justice, Imam, S. K. Das and Govinda Menon, JJ., was delivered by

S. K. DAS, J.—On November 8, 1955, the Ministry of Commerce and Industry, Government of India, published a notified order, in exercise of the powers conferred on that Government by section 18A of the Industries (Development and Regulation) Act, 1951, hereinafter referred to as the Act, authorising one Shri Kedar Nath Khetan of Padrauna, called the authorised Controller, to take over the management of the Ishwari Khetan Sugar Mills Ltd., Lakshmiganj, Deoria, subject to certain conditions. The order as originally passed and published was to have effect for a period of one year only, commencing on the date of its publication in the official Gazette. On November 7, 1956, there was an amendment of that order. The amendment was published in notification No 338-A of even date and stated in effect that instead and place of the words 'one year' occurring in the order, the words 'two years' shall be substituted.

Petitioner No. 1 before us is one Kamlaprasad Khetan, who states that he is a Director and shareholder of the second petitioner, which is the Ishwari Khetan Sugar Mills Ltd. The Union of India was and is the only respondent. By an order dated October 1, 1956, this Court permitted the said authorised Controller to intervene, with the result that both the Union of India and the authorised Controller have been heard in opposition to the petition. The substantial case of the petitioners is that the order referred to above, dated November 8, 1955, and the amending order dated November 7, 1956, are invalid in law and bad on certain other grounds to be stated presently, and it is not open to the Central Government to interfere with the fundamental right of the petitioners to hold and manage their property on the strength of the said invalid orders; the petitioners therefore pray for the issue of appropriate writs or directions to quash those orders.

Short and simple as the case of the petitioners appears to be at first sight, it is necessary to refer to a background of certain antecedent facts for a proper understanding and appreciation of the issues involved in the present dispute between the parties. The Ishwari Khetan Sugar Mills Ltd., is a public limited Company, in which four branches of a family known as the Khetan family held a large number of shares and only about one-fourth of the shares were held by outsiders. The Company was managed by a firm of Managing Agents, subject to supervision by the Directors. Four members of the Khetan family constituted the Managing Agency firm, of which Kedar Nath Khetan (later appointed as the authorised Controller) was one and Onkarmal Khetan (now deceased), father of petitioner Kamlaprasad Khetan, was another. The Managing Agents managed two Mills, known as the Ishwari Khetan Sugar Mills Ltd., Lakshmiganj, and the Maheshwari Khetan Sugar Mills Ltd., Ramkola, District Deoria. We are concerned in the present case with the Ishwari Khetan Sugar Mills Ltd. The Managing Agents were also partners in the firm of managing agents of certain other companies, namely, Morarji Gokul Das Spinning and Weaving Mills, Bombay, and Laxmidevi Sugar Mills Ltd., Deoria. In the affidavit in opposition filed on behalf of the authorised Controller, it is stated that the Khetan family was in the beginning a mere trading family, but "due to the initiative, business acumen and imagination of Rai Bahadur Kedar Nath Khetan, various manufacturing concerns including several sugar factories grew up"; and it was under his direction that the other members of the family, including Onkarmal Khetan, were put in charge of the day to day routine administration of one business or the other. There was a provision in the Managing Agency agreement under which every member of the firm of Managing Agents was authorised to exercise all the powers of the Manag-

ing Agents. According to the case of the authorised Controller, trouble arose between the members of the different branches of the family of Managing Agents sometime in 1950-51 when it came to light that Onkarmal Khetan had surreptitiously withdrawn large sums of money from the accounts of the various businesses in which the members of the Khetan family were interested as Managing Agents, and this led to certain suits being instituted against Onkarmal Khetan. The latter, in his turn, retaliated by bringing suits for the appointment of a Receiver, or for restraining the holding of a general meeting of one of the mills, and instituting certain other proceedings stated to be of an obstructive nature and calculated to create an impasse in the working of the mills.

The petitioners on the contrary alleged that when the balance sheet of the Ishwari Khetan Sugar Mills Ltd., for the financial year 1950-51 was published in June 1952, it was discovered that some of the Directors including the authorised Controller had utilised the funds of the Company for their personal gain and had committed breaches of certain provisions of the Indian Companies Act. This led to Suit No. 4 of 1952 brought by the petitioners against some of the Directors, including the authorised Controller, for an order of permanent injunction restraining the said Directors from exercising any powers as Directors of petitioner No. 2 and also for a declaration that a notice calling the twenty-fourth ordinary general meeting of the Company to be held on July 9, 1952, was illegal and invalid. In that suit, an *ex parte* order of injunction was made against the Directors concerned on July 8, 1952. That order was, however, subsequently vacated as being without jurisdiction and a fresh order was made on June 3, 1953. In the affidaviit filed on behalf of the authorised Controller, it has been stated that on legal advice obtained by the defendants of that suit to the effect that the *ex parte* order of injunction dated July 8, 1952 was, without jurisdiction, the twenty-fourth ordinary general meeting of the Company was held on July 9, 1952, and the shareholders unanimously passed a resolution in that meeting approving and adopting the Direetors' report and the audited balance sheet of the Company as on October 9, 1951. The fresh temporary order of injunction which was passed by the Civil Judge, Deoria, on June 3, 1953, was confirmed by the High Court of Allahabad by its order dated September 14, 1953. Feeling that the order of stay would completely dislocate the affairs of the Company, the shareholders themselves called an extraordinary general meeting which was held on November 9, 1953, and at that meeting the authorised Controller and certain other persons were re-elected as Directors of the Company, subject to the condition that if the Court decided in Suit No. 4 of 1952 that the said Directors had not ceased to be Directors; the resolution would be ineffectual to that extent. There were several proceedings in the High Court of Allahabad in connection with Suit No. 4 of 1952, and in one of them the High Court was moved for an expeditious hearing of the suit, and such a direction was made by the High Court. Unfortunately, however, for reasons which need not be stated here, Suit No. 4 of 1952, is still awaiting trial and on July 31, 1956, petitioner No. 1 obtained an *ex parte* order from the said High Court adjourning the hearing of the suit. The case of the authorised Controller is that petitioner No. I having realised that he is not supported by the majority of shareholders and cannot therefore legally represent the Company, is delaying the hearing of Suit No. 4 of 1952 on one ground or another.

While all this legal tussle, with allegations and counter allegations made by the parties, was going on in the arena of the Courts of law, certain other events happened to which a reference must now be made. The petitioners allege that the authorised Controller, finding that the majority of the shareholders and Directors were not in favour of his managing the Ishwari Khetan Sugar Mills Ltd. moved the Ministry of Food, through his grandson Durga Prasad Khetan and another gentleman related to him, for passing orders under sections 15 and 17 of the Act. On November 8, 1952, a communication was received from the Ministry of Food and Agriculture, Government of India, wherein was stated:

"The Government of India consider that if on account of the failure of the parties concerned to compose their differences and inability to take timely and proper steps to arrange for normal working of the mills, the mills are not able to start work in time during the 1952-53 season, or are unable to work at all, it will result in a substantial fall in the production of sugar without due justification. Such a result will lead to the conclusion that the mills are being managed in a manner likely to damage the interests of a substantial body of consumers besides cane growers and mill workers."

The communication concluded with the statement that, in the circumstances stated above, the Government of India would be constrained to order an investigation into the matter and, if necessary, to undertake the management of the said mills. It may be stated here that the communication was in respect of both the Ishwari Khetan Sugar Mills Ltd. and the Maheshwari Khetan Sugar Mills Ltd.

On December 18, 1952, the Central Government did actually pass an order under section 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, under which the authorised Controller was empowered to exercise certain functions of control in respect of the Ishwari Khetan Sugar Mills Ltd., the functions of control being stated in detail in notification No. S.R.O. 2073 of even date. On December 23, 1952, Onkarmal filed a writ petition to this Court against the aforesaid order of the Central Government and asked for an interim direction staying the operation of the order. This Court gave a direction expediting the hearing of the petition, and further directed that the accounts of the petitioner Company be audited periodically by a Government or private auditor at the instance of Onkarmal. The writ petition itself could not, however, be heard in time and was later dismissed on May 14, 1954, as having become infructuous in

the meantime. On July 30, 1953, the Central Government passed an order under section 15 of the Act in respect of several mills, including the Ishwari Khetan Sugar Mills Ltd. Under that order the Central Government appointed three independent persons for making a full and complete investigation into the circumstances of each of the industrial undertakings referred to therein. Then, on November 14, 1953, the Central Government made an order under section 18A of the Act, by which the authorised Controller was appointed to take over the management of the Ishwari Khetan Sugar Mills, Ltd. It may be stated here that the Act was amended in 1953 by Act 26 of 1953. By that amendment, section 17 was omitted and a new chapter, viz., Chapter IIIA, was inserted. This new chapter contained section 18A under which the Central Government passed its order dated November 14, 1953. The order stated that it shall have effect for a period of one year. In December, 1953, came the decision of this Court in *Dwarkadas Shrinivas of Bombay* v. *The Sholapur Spinning & Weaving Co. Ltd.*, [1954] S.C.R. 674. That decision pronounced on article 31 (2) of the Constitution with reference to the validity of the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance II of 1950 and Act XXVIII of 1950. As a result, presumably, of that decision, on May 21, 1954, the Central Government cancelled all appointments of authorised Controllers under the provisions of the Act, and on such cancellation the management of the industrial undertaking vested again in the owner of the undertaking. The case of the petitioners is that in spite of the cancellation the authorised Controller continued to remain in possession of the undertaking in question. On July 16, 1954, the Central Government again passed an order under sub-section (4) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946, thereby again giving the authorised Controller certain functions of control in respect of the Ishwari Khetan Sugar Mills Ltd. On September 19, 1954, there was another investigation under section 15 of the Act by a panel of officers and it is stated that they recommended that the Central Government should take over the management of the Mills for a period of three years. On January 31, 1955, the present petitioners filed a writ petition in this Court in respect of the order passed by the Central Government on July 16, 1954. This is the writ petition which, after necessary amendments, is now under consideration before us, the amendments having been necessitated by reason of certain subsequent notifications made by the Central Government. These subsequent notifications are—(1) the notifications made on November 8, 1955, by which the earlier order made on July 16, 1954, was cancelled and a fresh order made under section 18A of the Act; and (2) the amending order dated November 7, 1956—to both of which a reference has been made in the first paragraph of this judgment. By reason of these subsequent notifications, the order dated July 16, 1954, no longer exists, and the writ petition which was originally directed against that order stands in need of amendment.

The petitioners have prayed for an amendment of the original writ petition and also for permission to urge fresh grounds to challenge the validity of the two notified orders, one dated November 8, 1955, and the other dated November 7, 1956. By an order of the Judge-in-Chambers dated February 18, 1957, the petition for amendment and for urging additional grounds was directed to be heard along with the main petition under article 32. But before that date, i.e., on November 5, 1956, when the stay application of the petitioners was heard, the following direction was given by this Court—

"The hearing of the main petition under Art. 32 to be expedited.

....

It will be open to the petitioners to challenge that the appointment of R. B. Kedar Nath Khetan, if again made, is also bad".

In view of the aforesaid directions, we have treated the main petition under article 32 as a petition against the latest orders passed by the Central Government appointing the authorised Controller to take over the management of the undertaking, and we have also permitted the petitioners to urge fresh grounds in support of their petition.

Having indicated in the preceding paragraphs the necessary background against which the dispute between the parties has to be considered, we proceed now to a consideration of the grounds on which the petitioners challenge the validity of the orders dated November 8, 1955, and November 7, 1956. It is necessary to clear the ground by stating at the very outset that learned counsel for the petitioners has not challenged the validity of section 18A of the Act under which the impugned orders were made. We have already stated that Chapter IIIA of the Act was inserted by the amending Act 26 of 1953. Article 31B of the Constitution was enacted by the Constitution (First Amendment) Act, 1951, which states, *inter alia*, that none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part (meaning Part III) of the Constitution. The Ninth Schedule was added to by the Constitution (Fourth Amendment) Act, 1955. Item No. 19 of the Ninth Schedule is now Chapter IIIA of the Act as inserted by the Industries (Development and Regulation) Amendment Act, 1953. Learned Counsel for the petitioners has frankly conceded that in view of these amending provisions, he is not now in a position to challenge the validity of section 18A of the Act.

Therefore, the principal question for our consideration is the validity of the impugned orders made under that section. Learned counsel for the petitioners has attacked the two orders on the following grounds:

(1) the order of November 8, 1955, is not a lawful order, as it does not fulfil one of the essential requirements of section 18A of the Act under which it purports to have been made ;

(2) even assuming that the order was a good order when it was made, section 18A of the Act does not authorise an extension of the period during which the order is to remain in force, in the manner in which the extension was made on November 7, 1956, and such extension did not comply with one of the essential requirements of section 21 of the General Clauses Act, (No. X of 1897) ; and

(3) in any event, the order is not a *bona fide* order in that the Central Government appointed the very person who was mismanaging the undertaking, who was one of the parties to a pending dispute, and against whom an order of injunction had been passed by a Court of competant jurisdiction.

These three grounds we now propose to examine in the order in which we have set them out.

(1) We must first read section 18A of the Act so far as it is relevant for our purpose. The section states—

" If the Central Government is of opinion that—

(a)..

(b) an industrial undertaking in respect of which an investigation has been made under section 15 (whether or not any directions have been issued to the undertaking in pursuance of section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,

the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (1) shall have effect for such period not exceeding five years as may be specified in the order :

Provided that the Central Government, if it is of opinion that it is expedient in public interest so to do, may direct that any such notified order shall continue to have effect after the expiry of the period of five years aforesaid for such further period as may be specified in the direction and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament."

The argument before us is that for the application of clause (b) of sub-section (1) of section 18, the two essential requirements are—(i) an investigation under section 15 of the Act and (ii) the opinion of the Central Government that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. Learned Counsel for the petitioners has conceded that before the order dated November 8, 1955, was made, there was an investigation under section 15 of the Act in respect of the industrial undertaking in question, and the first requirement was thus fulfilled. Learned counsel has, however, very strongly submitted that the second requirement was not fulfilled in the present case, because the authorised Controller himself was in charge of the undertaking from December 18, 1952, till November 8, 1955 (when the impugned order was made) with a small break of less than two months only between the two dates, May 21, 1954, when all appointments under the Act were cancelled and July 16, 1954, when a fresh order under the Essential Supplies (Temporary Powers) Act, 1946 was made, and even during this short period the case of the petitioners is that the authorised Controller continued in possession. Founding himself on these circumstances, learned counsel for the petitioners contends that it was rationally and logically impossible for the Central Government to be of opinion that the industrial undertaking was being managed in a manner highly detrimental to the public interest, before the impugned order was made.

We are unable to accept this argument as correct. We have already referred to the legal tussle which was going on between the parties with regard to the management of the industrial undertaking in question. The Central Government very rightly pointed out in their letter dated November 8, 1952, that the result of the differences between the parties was likely to be a stoppage of the mill and a fall in the production of sugar with consequential detriment to the interests of the industry concerned and the interests of a substantial body of consumers, cane growers and mill workers. In view of the litigation which was pending between the parties, the likelihood of the dangers at which the Central Government hinted in 1952 must have continued to exist, as long as the management was not fully and completely taken over by the authorised Controller. In December, 1952, the order passed under the Essential Supplies (Temporary Powers) Act, 1946, merely gave some functions of control to the authorised Controller; it did not vest the management in him. This distinction between exercising certain functions of control, however drastic the functions may be, on an order made under sub-section (4) of section 3 of the Essential Supplies (Temporary Powers) Act and the taking over of the management of the whole of an undertaking on an order under section 18A of the Act is a real distinction which must be borne in mind, as it has a bearing on the argument advanced before us. Sub-section (4) of section 3 of the Essential Supplies (Temporary Powers) Act, 1946, authorises the Controller to exercise with respect to the whole or any part of the undertaking, such functions of control as may be provided by the order; section 18A of the Act is in wider terms and empowers the Central Government to authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order. Section 18B of the Act states the effect of a notified order under section 18A; in sub-section (1), clauses (a) to (e), is stated the effect of taking over the management, and in sub-section (3) is stated the effect of merely giving functions of control—a distinction which is clearly drawn in the section itself. It is not difficult to conceive that in a particular industrial undertaking the mere giving of some functions of control may not be enough to meet the situation which has arisen and it may be necessary for the Central Government to pass an order taking over the management of the whole of the undertaking. In the case under our consideration, in

December, 1952, certain functions of control were vested in the authorised Controller, but the management of the whole undertaking was not taken over. This continued till an investigation was ordered under section 15 of the Act on July 30, 1953. Then, on November 14, 1953, the authorised Controller was directed to take over the management of the whole of the industrial undertaking. This order was, however, cancelled on May 21, 1954, and under section 18F of the Act, the effect of the cancellation was to vest the management of the undertaking again in its owner, the expression 'owner' meaning, under section 3 (f) of the Act, the person who, or the authority which, has the ultimate control over the affairs of the undertaking and, where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. Therefore, the legal effect of the cancellation on May 21, 1954, was to vest the management of the Ishwari Khetan Sugar Mills Ltd., in the Directors and Managing Agents who were quarrelling amongst themselves. On behalf of the petitioners, it has been pointed out that Kedar Nath Khetan, the erstwhile authorised Controller, continued to remain in possession in spite of the cancellation order. In an affidavit filed on behalf of the Central Government, it is stated that after the cancellation order, Kedar Nath Khetan, the erstwhile authorised Controller, informed the Government of India that he was continuing in management in a capacity other than that of authorised Controller. The affidavit filed on behalf of the authorised Controller states, however, that between the time the Central Government directed him to hand over possession to the Directors and the time when he was again appointed on July 16, 1954, the management of the Company remained in the hands of the Directors who were in possession of the undertaking. It is not necessary for us to pronounce on these disputed facts. It is abundantly clear from the affidavits filed that peace amongst the Directors or in the family of the Managing Agents had not been restored by the time the cancellation order was made on May 21, 1954. Suit No. 4 of 1952 was still pending, and the tussle between the parties was going on. This was the position when another order was made under the Essential Supplies (Temporary Powers) Act, 1946, on July 16, 1954. This was followed by a second investigation under section 15 of the Act in September, 1954. Petitioner No. 1 was still pursuing what he conceived to be his legal remedy by filing a writ application in respect of the order dated July 16, 1954, in this Court and also in other proceedings arising out of Suit No. 4 of 1952, in the High Court of Allahabad. In these circumstances, the Central Government made the impugned order dated November 8, 1955. Having regard to the circumstances just stated, it is, we think, idle to contend that the Central Government had no materials before it for arriving at the opinion that the industrial undertaking was being managed in a manner highly detrimental to public interest. The Central Government might reasonably have felt that the order dated July 16, 1954, which vested certain functions of control only, was not enough to meet the situation and a more drastic step was necessary. It is worthy of note that in the affidavit filed on behalf of the Central Government it is stated that the affairs of the industrial undertaking were investigated a second time under section 15 of the Act in September, 1954, and the panel of officers who held that investigation recommended that Government should take over the management of the industrial undertaking for a period of three years. It is on that recommendation that the Central Government passed the impugned order on November 8, 1955. We are unable to accept the argument of learned counsel for the petitioners that one of the essential requirements of clause (b) of sub-section (1) of section 18A of the Act was not fulfilled before the order dated November 8, 1955, was made.

Learned counsel for the petitioners has drawn our attention to those statements in the affidavit filed on behalf of the Central Government which referred to the improvement in management, after the undertaking was taken over by the authorised Controller. In that affidavit, it is stated:

"I say that by virtue of the order issued by the Government of India under section 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, the Government of India had taken over only the supervisory control and the said Kedar Nath Khetan had only powers to issue directions to the management. The management was with the old management and the Government of India or the authorised Controller had no effective functioning in the management as the authorised Controller could not manage the undertaking. I say that in view of the continued litigation referred to in detail in the affidavit of the intervener dated 25th October, 1956, it was apparent that the mill was being managed in a manner highly detrimental to the interest of the undertaking and that it was necessary to pass the order under section 18A of the Industries (Development and Regulation) Act, 1951. I say that after the management was taken over by Shri Kedar Nath Khetan, the Government has reason to believe that the management has improved and has saved further deterioration."

In another part of the same affidavit, it is stated that the mill earned a profit during 1953-54 and in 1954-55 also the mill was likely to make a net profit of Rs. 84,321. We see nothing in these statements from which it can be inferred that the recorded opinion of the Central Government in the order dated November 8, 1955, that the industrial undertaking was being managed in a manner highly detrimental to public interest contained a palpably false statement. The crux of the matter was the dispute *inter se* amongst the Directors and the Managing Agents, leading to protracted and harassing litigation, some of which was still pending; that was the real cause of the trouble, and we think that the Central Government had enough materials for its opinion that the industrial undertaking in question was being managed in a manner highly detrimental to public interest.

(2) We now turn to the amending order of November 7, 1956. The amending order is in these terms:

"In the said order in sub-clause (ii) of clause 1 and clause 2 for the words 'one year', the words 'two years', shall be substituted."

Section 21 of the General Clauses Act states:

"Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

The argument of learned counsel for the petitioners is that neither section 18A of the Act nor section 21 of the General Clauses Act save the amending order of November 7, 1956. There has been some argument before us with regard to the proviso to sub-section (2) of section 18A of the Act, which we have quoted *in extenso* in an earlier part of the judgment. That proviso, it is contended by learned counsel for the petitioners, refers only to an order which is initially made for a period of five years, or, alternatively, which comes to an end on the expiry of a period of five years. According to him, the proviso empowers the Central Government to continue the order after the expiry of a period of five years for such further period as may be specified in the direction given by the Central Government, and the only safeguard is that a copy of the direction is to be laid before both Houses of Parliament. The argument of learned counsel for the petitioners proceeds to state that the proviso has no application in the present case where the original order was made for a period of one year only and the amending order merely continued it for another year. In the view which we have taken of the substantive provisions of sub-section (1) of section 18A of the Act and section 21 of the General Clauses Act, we do not think it necessary to make any pronouncement with regard to the true scope and effect of the aforesaid proviso. In our opinion, the amending order is protected under section 21 of the General Clauses Act read with sub-section (1) of section 18A of the Act.

Section 21 of the General Clauses Act says, *inter alia*, that the power to issue an order under any Central Act includes a power to amend the order: but this power is subject to a very important qualification and the qualification is contained in the words 'exercisable in the like manner and subject to the like sanction and conditions (if any)'. There is no dispute before us that the amending order was made in the same manner as the original order, that is, by means of a notified order. As no sanction is necessary for an order under section 18A, the only question before us is whether the amending order complied with the like conditions under which the original order was made. We have already stated what are the two essential requirements of an order under clause (b) of sub-section (1) of section 18A of the Act. The argument of learned counsel for the petitioners is that those two essential conditions must be fulfilled again before any amendment of the order can be made; this, he urges, is the true scope and effect of the expression 'subject to the like conditions (if any)' occurring in section 21 of the General Clauses Act.

We agree with learned counsel for the petitioners that the power to amend, which is included in the power to make the order, is exercisable in the like manner and subject to the like sanction and conditions (if any) as govern the making of the original order; this is stated by the section itself. It becomes necessary, however, to understand clearly the true nature of the conditions which have to be fulfilled before an order under clause (b) of sub-section (1) of section 18A of the Act can be made. Once the true nature of those conditions is appreciated, there is, in our opinion little difficulty left in the application of section 21 of the General Clauses Act. Now, the first condition in clause (b) of sub-section (1) of section 18A of the Act is that the industrial undertaking must be one in respect of which an investigation has been made under section 15 of the Act. Section 15 is in these terms:

"Where the Central Government is of the opinion that—

(a) in respect of any scheduled industry or industrial undertaking or undertakings—

(i) there has been or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which, having regard to the economic conditions prevailing, there is no justification; or

(ii) there has been, or is likely to be, a marked deterioration in the equality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or

(iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or

(iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be; or

(b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest;

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose."

The order for investigation in this case was made under clause (b) of section 15, and that clause again uses the expression that the 'industrial undertaking is being managed in a manner highly detrimental to the industry concerned or to public interest'—the same expression which occurs in clause (b) of sub-section (1) of section 18A of the Act. Section 16 of the Act states, *inter alia*, that if, after making or causing to be made any investigation under section 15, the Central Government is satisfied that action under the section is desirable, it may then issue certain directions which are

stated in the section. It may, however, be that in a given case the management is so detrimental to the industry concerned or to public interest that mere directions under section 16 are not enough; in that event, the Central Government may take over the management by an order passed under clause (b) of sub-section (1) of section 18A of the Act. There may even be a case where in spite of the directions, no sufficient improvement has taken place and an order under sub-section (1) of section 18A of the Act becomes necessary. That is why in clause (b) of sub-section (1) occurs the expression 'whether or not any directions have been issued to the undertaking in pursuance of section 16.' That is also the reason why the same expression 'is being managed in a manner highly detrimental etc.' occurs both in clause (b) of section 15 and clause (b) of sub-section (1) of section 18A of the Act. An investigation is ordered when the conditions mentioned in section 15 are fulfilled, one of the conditions being that the industrial undertaking in being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. On such an investigation being made, the Central Government may issue directions under section 16; those directions may or may not improve the situation. If they do not improve the situation, or if the mere giving of directions under section 16 is not considered sufficient to meet the situation, the Central Government may pass an order under section 18A; but one of the requisite conditions is that the Central Government must be of opinion that the industrial undertaking is still being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. If these sections, 15, 16 and 18A, are read together, as they must be read, then it becomes at once clear that the conditions as to the management of the industrial undertaking in a manner highly detrimental to the scheduled industry concerned or to public interest relates in its true scope and effect to a period when the management of the industrial undertaking is in the hands of its owner, that is, to a period before the management of the whole or any part of the undertaking is taken over. Similarly, with regard to the exercise of functions of control, which also is contemplated by section 18A of the Act, the condition again relates to a period before the functions of control are taken over. It would, in our opinion, be illogical and against the terms of sections 15, 16 and 18A of the Act to hold that the condition as to mismanagement (using the word 'mismanagement' for the purpose of brevity and convenience, for the correct expression, namely, 'management in a manner highly detrimental to the scheduled industry concerned or to public interest') can apply after the management has been taken over and during the period of its management by the authorised Controller. The contention of learned counsel for the petitioners is that whenever an amendment is made, the test of mismanagement must again be fulfilled. Let us examine the full implications of this argument. If after the management is taken over, the authorised Controller becomes seriously ill or dies in a few days when the period of the order has not expired, the Central Government may find it necessary to appoint another person and for that purpose make an amendment. If the argument of learned counsel for the petitioners is correct, then no amendment can be made unless the test of mismanagement is again fulfilled; but how can such a test be fulfilled when the management was in the hands of the authorised Controller till he died, the authorised Controller being more or less in the position of an agent of the Central Government? The argument of learned counsel for the petitioners pushed to its logical extreme, will thus result in an absurdity and no amendment will ever be possible.

Learned counsel for the authorised Controller has on the contrary contended that the two conditions laid down in clause (b) of sub-section (i) of section 18A of the Act are not static in nature and once they are fulfilled, they continue to have effect thereafter whatever may have happened in the meantime. The argument proceeds to state that if an investigation under section 15 of the Act had once been made and if at some previous stage the industrial undertaking was mismanaged, the two conditions continue to operate irrespective of whether the undertaking vests in the owner again for a time, and an amendment may be made at any time and even a fresh order can be made without the necessity of a fresh investigation and a fresh mismanagement.

We consider that both these are extreme views. On a proper construction of sections 15, 16 and 18A of the Act, the correct view appears to be what we have stated earlier, namely the two conditions, one as to an investigation under section 15 and the other as to mismanagement, relate to a period when the management of the industrial undertaking is legally vested in its owner, and section 18A must be read, with reference to the two conditions stated in clause (b) of sub-section (1), as though the words 'while the undertaking is vested in its owner' are present in the clause. If, as in this case, the management is once taken over by an order under section 18A but the order is later cancelled and the management again vests in the owner, the two conditions must be fulfilled again before an order under clause (b) of sub-section (1) of section 18A of the Act can be made. That is what happened in the present case. The management was taken over on November 14, 1953, but the order was cancelled on May 21, 1954, and the management vested in the owner. An investigation under section 15 of the Act was again made in September 1954 and the Central Government, being satisfied that the industrial undertaking was being mismanaged in spite of the order under the Essential Supplies (Temporary Powers) Act made on July 6, 1954, passed the impugned order on November 8, 1955. So far as the amending order of November 7, 1956, was concerned, the like conditions still continued to exist and there was no necessity for a fresh investigation etc., because the management had not since November 8, 1955, vested in the owner, and by their very nature the conditions continued to exist till the management went into the hands of the owner again. Having regard to the true nature of the conditions laid down in section 18A of the Act, there was no violation of section 21 of the General Clauses Act when the amendment was made on November 7, 1956, and, in our opinion, the requirements of section 21 had been substantially complied with. The power to amend which is included in the power to make the order was exercised subject to like conditions within the meaning of section 21 of the General Clauses Act the conditions being an investigation under section 15 of the Act and management in a manner highly detrimental to public interest, both of which necessarily related to the period when the management of the industrial undertaking was legally vested in its owner; and both had been fulfilled and continued to be so fulfilled when the amendment was made. It is to be remembered that section 21 of the General Clauses Act embodies a rule of construction, and that rule must have reference to the context and subject-matter of the particular statute to which it is being applied; for example, section 18A of the Act does not prescribe any conditions for the cancellation of an order made under that section, but section 18F does and the power of cancellation referred to in section 21 of the General Clauses Act must have reference to section 18F. Similarly, an order of amendment made becomes an order under section 18A and is subject to all the conditions mentioned therein, including the condition mentioned in sub-section (2).

A reference was made in this connection to a decision of this Court in *Strawboard Manufacturing Co.* v. *Gutta Mill Workers' Union*, [1953] 4 F.J.R. 456. In that case, the State Government of Uttar Pradesh had referred an industrial dispute to the Labour Commissioner on Febuary 18, 1950, and directed that the award should be submitted not later than April 5, 1950. The award, however, was made on April 13, and on April 26 the Governor issued a notification extending the time for making the award up to April 30, 1950. It was held by this Court that the State Government had no authority whatever to extend the time and the adjudicator became *functus officio* on the expiry of the time fixed in the original order of reference and the award was, therefore, one made without jurisdiction and a nullity. It was further held that section 14 of the U. P. General Clauses Act did not in terms or by necessary implication give any such power of extension of time to the State Government. It was argued on behalf of the State Government in that case that the order of April 26, 1950, could be supported with reference to section 21 of the U. P. General Clauses Act. But this Court rejected the argument and held that the power of amendment and modification conferred by section 21 of the U. P. General Clauses Act could not be exercised so as to have retrospective operation. We do not think that the principle of that decision has any application in the present case. But as already stated by us, the provision in section 21 of the General Clauses Act embodies a rule of construction, and the implied power of amendment therein embodied must be determined with reference to the context and subject-matter of the provisions of the principal statute. In the present case, that rule of construction applies, but it does so with reference to the context and subject-matter of sections 15, 16 and 18A of the Act.

(3) We now turn to the third and last question which has been agitated before us. Learned counsel for the petitioners has contended that the impugned orders are not *bona fide* orders. He has submitted that the authorised Controller was one of the parties to the dispute which led to so much protracted litigation. He has pointed out that there was an order of injunction against him. He has also referred to certain other circumstances arising out of other activities of the authorised Controller and relating to income-tax demands against him. He has admitted that the authorised Controller ceased to be a Director by reason of breaches of certain provisions of the Indian Companies Act committed by him. These submissions have been very seriously contested in the affidavit filed on behalf of the authorised Controller. On the materials before us, it is neither possible nor desirable that we should make any pronouncement with regard to these disputed questions of fact. It is sufficient to state that the selection of a suitable person to be the authorised Controller rests with the Central Government and it may be presumed that the Central Government knows best the needs of the particular industry and of its own subjects and the suitability of the person to be appointed as authorised Controller. Having regard to the facts and circumstances to which we have already made a reference, it cannot be said that the appointment of Kedar Nath Khetan as the authorised Controller in this particular case was made for some ulterior purpose, that is, a purpose other than the purpose of achieving the objects for which the impugned order was passed. The primary concern of the Central Government was to see that the mills were managed in a manner which was not deterimental to public interest, and having regard to the experience of Kedar Nath Khetan in the industry in question, it was open to the Central Government to select him as the most suitable person to be appointed as the authorised Controller, notwithstanding that he was a party to the dispute. The test to be applied in cases of this nature, where lack of good faith in the Central Government is pleaded, is not whether a better or more independent man was or might be available; nor is it the duty of the Court to subject the selection made by the Central Government to another and independent test of propriety and suitability, for the Court has really no materials for such a test. The test to be applied is whether the appointment was made for some ulterior purpose, some purpose other than the object for which the law, under which the impugned order is made, was enacted. In our view, the petitioners have completely failed to satisfy that test in the present case.

For the reasons given above, we hold that the order made on November 8, 1955, and the amending order dated November 7, 1956, are both valid in law, and the petitioners have not made out any case of a violation of their undamental right.

In conclusion, it may be stated that on behalf of the authorised Controller a preliminary objection was also taken that petitioner No. 1 was not legally competent to represent petitioner No. 2. Having regard to our deci-

sion on merits, it is unnecessary to say anything more about this preliminary objection. It was stated at the Bar that this preliminary objection has also been taken in Suit No. 4 of 1952. As that suit is still pending, we have thought it fit to refrain from expressing any opinion on the preliminary objection.

The result is that there is no merit in the petition which is dismissed with costs in favour of the respondent, the Union of India. The authorised Controller, who intervened at his own risk, must bear his own costs.

The following concurrent Judgment was delivered by

SARKAR, J.—I have had the privilege of reading the judgment just delivered by my brother S. K. Das. I regret that on one of the questions that arise in this matter I have come to entertain a different opinion. In this judgment I will say a few words on that question only. With the rest of the judgment of S. K. Das, J., I am in entire agreement. He has dealt with the facts very fully and therefore I do not propose to state them myself.

The Central Government had by an order published in the official Gazette of November 8, 1955, and made in exercise of the power conferred by section 18A of the Industries (Development & Regulation) Act 1951 (Act LXV of 1951), authorised Kedar Nath Khetan who had been allowed to intervene in these proceedings to take over the management of Ishwari Khetan Sugar Mills Limited, an industrial concern then in the management of its directors. The order provided that it was to have effect for a period of one year commencing on the date of its publication in the official Gazette. By another order made on November 7, 1956, the Central Government directed that in the order of November 8, 1955 for the words " one year " the words " two years " should be substituted. The effect of this latter order was that Kedar Nath Khetan was to be in management of the Mills up to November 7, 1957. The question is whether the order of November 7, 1956, was a valid order. The latter order is only an amendment of the earlier order. Had the Central Government then any power so to amend?

Section 18A does not expressly confer any power to amend an order once it is made under it. Section 21 of the General Clauses Act, however, provides that a power of amendment shall exist in certain circumstances. The only question, therefore, is whether section 21 of the General Clauses Act justifies the amendment made in this case. Section 21 is in these terms:

> "Where, by any (Central Act) or Regulation, a power to issue (notifications), orders, rules or bye-laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued)."

Under this section a Notification or an Order once issued can be amended only "in the like manner and subject to the like sanction and conditions (if any)". This means that the power of amendment can be exercised only in the same manner and subject to the same sanction and conditions if any were imposed, in which the power to make the order could be exercised under the main Act. Was the order of November 7, 1956, then made in the same manner and subject to the same sanction and conditions under which an order under section 18A of the main Act could be made?

Under section 18A the power to authorise a person to take over the management of an undertaking can be exercised only by a notified order, that is to say an order notified in the official Gazette. This is the manner of the exercise of the power. The amending Order had been made in the same manner. This requirement of section 21 of the General Clauses Act, therefore, was fulfilled in this case. Section 18A does not provide for any sanction being obtained before the exercise of the power conferred by it. The amending Order, therefore, did not need any sanction, and no question of satisfying any requirement as to any sanction arises. The difficulty has arisen as to the last requirement specified in section 21, namely that indicated by the words 'subject to like conditions'. Section 18A of the main Act so far as relevant for the present purpose is in these terms:

"If the Central Government is of opinion that....................

(a)... ....

(b) an industrial undertaking in respect of which an investigation has been made under section 15..............is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by a notified order, authorise any person or...... ....to take over the management of.................the undertaking ...."

Learned counsel for the petitioner formulated his argument in this way. He said that the right to exercise the power conferred by section 18A arises only on two conditions being fulfilled, namely, (a) the existence of an industrial undertaking in respect of which an investigation had been made under section 15, and (b) the Central Government being of opinion that such an undertaking is being managed in a manner highly detrimental to the industry or to public interest. It was said that in this case the second condition was not present when the order for amendment of the earlier order was made and therefore it is invalid. I agree that the second condition was not present when the amending order was made. The reason is this. Section 18A contemplates the taking over of management of an undertaking by a person authorised by the Government. It, therefore, contemplates a state of affairs in which the management is not in such a person. It follows hat it contemplates management in a manner highly detrimental to the industry or public interest by a person other than that appointed by the Government under the Act. In this case at the date of the amendment the management was in the person appointed by the Government by its earlier order of November 7, 1955, and therefore the Government could not at the date of the amending order have been of opinion that the management was by a person other than that appointed by it and such management was in a manner highly detrimental to the industry or to public interest.

In my view, however, when section 21 of the General Clauses Act makes the power to amend exercisable subject to the like conditions as in the main Act, it does not contemplate those conditions upon the fulfilment of which the right to issue the order arises under the main Act. If this were so, the power of amendment conferred by section 21 would have been wholly redundant and unnecessary. If the conditions upon the fulfilment of which the right to exercise the power arose under the main Act existed then the Government could have instead of amending the order made a fresh order under section 14 of the General Clauses Act, if necessary, rescinding the earlier order. Therefore, it seems to me that the provision in section 21 of the General Clauses Act that the power of amendment shall be exercisable subject to like conditions does not refer to conditions upon the existence of which the right to exercise the power arises under the main Act. In my view the conditions referred to in section 21 are the conditions to which the order issued under the main Act must be made subject. Thus, in this case sub-section 2 of section 18A provides that "any notified order issued under sub-section 1 shall have effect for such period not exceeding five years as may be specified in the order". The effect of this sub-section is that the order made under section 18A must be subject to the condition that it cannot have effect for a longer period than 5 years. When, therefore, an order once made under section 18A is sought to be amended with the aid derived from section 21 of the General Clauses Act, the amendment must observe the condition laid down in sub-section (2) of section 18A. Such amendment is subject to the conditions in the main Act. The amendment cannot therefore extend the operation of the order beyond the period of five years mentioned in the main Act.

In this present case the amending order of November 7, 1956, complied with this condition and therefore it was properly made in compliance with the provisions of section 21 of the General Clauses Act. For this reason, in my view the argument of the learned Counsel for the petitioner that the amending order was invalid must fail.

I, therefore, agree with the order proposed by S. K. Das, J.

[IN THE PUNJAB HIGH COURT]

GOVERDHANDAS AND ANOTHER
v.
SECOND PUNJAB INDUSTRIAL TRIBUNAL AND OTHERS.

Bishan Narain, J.

May 22, 1957.

SETTLEMENT—EFFECT—PRIVATE SETTLEMENT BETWEEN PARTIES TO INDUSTRIAL DISPUTE—WHETHER ENDS INDUSTRIAL DISPUTE—RIGHT OF GOVERNMENT TO REFER DISPUTE TO TRIBUNAL AFTER SETTLEMENT—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(P), 10, 18 AND 19.

INDUSTRIAL DISPUTE—WORKMEN REPRESENTED BY MORE THAN ONE UNION—SETTLEMENT WITH ONE UNION—WHETHER ENDS DISPUTE—WHETHER GOVERNMENT CAN REFER DISPUTE TO TRIBUNAL—INDUSTRIAL DISPUTES ACT, 1947, SECTION 10.

Though there can be no existing or apprehended dispute between the parties, if they have reached a settlement under the Industrial Disputes Act, 1947, the same cannot be said of a private settlement which is not arrived at in the course of conciliation proceedings. A private settlement is no bar to the reference of an industrial dispute to an Industrial Tribunal by the appropriate Government.

(Note: *Under the definition of 'settlement' in section 2(p) of the Act as amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1946, a private settlement between the parties is included within the definition. This decision is, therefore, contrary to the provisions of the Act.*—Ed.).

Where there are more than one trade union representing the workmen of an undertaking, a settlement arrived at under section 12(3) of the Act between the employer and one of the trade unions will not preclude the appropriate Government from in making a reference of a dispute between the employer and the workmen if any other trade union of the workmen is not satisfied with the settlement.

Civil Writ No. 113 of 1956.

Bhagirath Das and *Rajinder Sachar* for the petitioners.

S. M. Sikri, Advocate-General and *Anand Swaroop* for the respondents.

JUDGMENT.

The State Government of the Punjab in writing referred five disputes to the Second Industrial Tribunal, Punjab, Amritsar, under section 10 (1) (c) of the Industrial Disputes Act, 1947 (No. 14 of 1947), as in its opinion these disputes existed between the workmen and the management of eight industrial establishments (metal industries). The necessary notification was issued on 19th March, 1956. Two of these industrial concerns have filed this petition under article 226 of the Constitution challenging the validity of this reference.

This petition was based on certain grounds but it is not necessary to refer to them as the learned counsel for the petitioners did not press these grounds before me in view of the recent decisions of their Lordships of the Supreme Court. The learned counsel however, urged that in view of settlement between the management and the workmen under section 12(3) of the Act the reference was illegal as in such a case it cannot be said that a dispute existed or was apprehended so as to justify a reference to the Industrial Tribunal. This ground was taken in an application for stay of proceedings before the Tribunal and therefore on 14th March, 1957, I permitted the petitioners to raise this point in the interests of justice as it had also been raised in other writ petitions and I have treated the stay application as supplementary to the main application. Thereafter, I adjourned the case to enable the respondents to file a reply to this allegation. The reply and a counter reply have now been filed.

In the supplementary petition all that was stated was that there was a conciliation under section 12(3) of the Act and therefore there was no dispute which could be referred to the Tribunal. The Labour Commissioner has filed a detailed reply. He has stated that on 9th December, 1955, the District Metal Mazdoor Union (Registered), Jullundur, served a notice of demand on the employers and when these demands were not satisfied the workers went on strike. During the strike another trade union known as the Azad Factory Workers' Union, Jullundur, which was at that time an unregistered body, served another demand notice containing demands almost identical with those of the Mazdoor Union. It appears that negotiations had been going on between the employers and the Mazdoor Union since December, 1955 (*vide* copies of letters produced by the Mazdoor Union). Ultimately the Commissioner himself decided to interfere in view of the serious situation that had arisen in metal industry. A meeting was arranged for 14th March, 1956. In this meeting the representatives of the employers of the District Metal Mazdoor Union, the General Secretary of the All India Trade Union Congress with which the Mazdoor Union is affiliated and the Azad Factory Workers' Union were present. No settlement was reached in the meeting and the Commissioner left the meeting. Later on, the representatives of the employers and of the Azad Factory Workers' Union went to the railway station and informed the Commissioner that a compromise had been reached between the parties before him, i.e., between the employers and the Azad Factory Workers' Union and a request was made to him that he may sign it. The Labour Commissioner, however, refused to do so. According to the Labour Commissioner the Mazdoor Union is a registered body since some time before the present dispute arose in December, 1955, and the Azad Union was registered on 20th April, 1956, i.e., after the alleged conciliation. It appears that the Labour Commissioner has made inquiries into the credentials of the two Unions and according to him the total membership of the Mazdoor Union is 800 while that of the Azad Union is 150.

The Mazdoor Union on its own application is also before me. It says that the demand notice was served by it on the employers in December, 1955, and they had been dealing with this Union even during the strike till a spurious Azad Union was set up which was not registered. The allegation is that the Azad Union consists of workers who had not joined the strike. The Mazdoor Union denies like the Labour Commissioner that there was any conciliation within section 12(3) of the Act.

The petitioners have given a version of the meeting of 14th March, 1956, which is not only different but is in direct conflict with that given by the Labour Commissioner. They state that in the course of conciliation proceedings under section 12 of the Act the credentials of the Mazdoor Union to represent the workmen were challenged on 29th February, 1956, and the Union's representatives without giving a satisfactory reply walked out of the meeting. According to them the Mazoor Union was not represented in the meeting of 14th March, 1956, while all the others mentioned by the Labour Commissioner were present. The meeting lasted for six hours and then a settlement was reached upon direct intervention of the Labour Commissioner. The settlement was finally typed by the stenographer of the Labour Commissioner and then it was signed by all the parties concerned including the Labour Commissioner. It is alleged that the proceedings of 14th March, 1956, were initiated by the Commissioner who is a Conciliation Officer under the Act and a settlement was reached in his presence which settlement was signed by him and by the representatives of the industrial establishments concerned and the Azad Factory Workers' Union. It is further alleged that the Azad Union is affiliated to the Indian National Trade Union Congress.

I have given in some detail the conflicting versions of the meeting of 14th March, 1956. It is neither satisfactory nor proper to determine this dispute in these proceedings which are essentially of a summary nature. It may, however, be assumed for the purposes of this case that there was a settlement between the employers and the Azad Union on 14th March, 1956. The settlement which is alleged to have been typed is not before me. It is alleged to have been signed by the petitioners and the Azad Union and it may or may not have been signed by the Labour Commissioner. I refrain from deciding this matter. The copy produced by the petitioners in this petition or other writ petitions does not admittedly bear the signatures of the Labour Commissioner. In this unsatisfactory state of affairs two questions arise:

(1) Whether, the settlement between the employers and the employees if reached without the intervention of the Conciliation Officer or Commissioner can be considered to be a settlement under section 12(3) of the Act which would preclude the State Government from referring the same matter to the Industrial Tribunal, and

(2) Whether, assuming the settlement to be under section 12(3) of the Act, the State Government is precluded from referring the same matter

to the Industrial Tribunal when another Union representing some workmen at least is not accepting that settlement.

The first question deals with a private settlement between the management and its workmen. The question is whether a private settlement between them and without the intervention of the Conciliation Officer would preclude the Government from referring the same matter to the Industrial Tribunal as an existing or apprehended dispute under section 10 of the Industrial Disputes Act, 1947. It is well established that the object of this Act is to achieve industrial peace so that the management and the workmen may remain satisfied with the general working conditions in the industry and thus increase production. The Act contemplates that Conciliation Officers appointed under the Act should bring about conciliation between the parties when a dispute arises or is apprehended and if such a settlement or conciliation cannot be reached then the same may be adjudicated upon under section 10 or section 10A of the Act. To my mind conciliation proceedings are just as important, if not more important, as adjudication proceedings. Section 12 of the Act deals with conciliation proceedings. Sections 18 and 19 lay down that a settlement arrived at in the course of conciliation proceedings under the Act shall be binding on all parties to the industrial dispute. There can be obviously no existing or apprehended dispute between the parties if they reach a settlement under the Act. It appears to me that the wordings employed under sections 18 and 19 exclude the applicablity of the Act to a private settlement which is not arrived at in the course of conciliation proceedings under the Act. There is a reason behind it. Considering the industrial conditions in this country and considering the comparatively unorganized labour a settlement to achieve the object underlying this Act should be fair to both the parties so that it may be lasting. Such a settlement should not depend on the bargaining power or weakness of a party to a dispute at a given time. There can be no permanent industrial peace in an industry unless both the employers and the workmen obtain fair terms for their labour which are commensurate with a trading condition in the industry. A private settlement may or may not be binding on the parties under a general law but in the concept of an industrial dispute such a settlement has no place. If it be held that a private conciliation settles an industrial dispute, then it will be open to the employers to approach individual workmen and settle with each of them separately. Such a settlement cannot obviously result in industrial peace and is likely to make the workers as helpless as they had been before the labour legislation was introduced in this country, the possibility of an employer settling a dispute with individual workmen is contrary to the object and purpose of the Industrial Disputes Act. All the provisions of this Act and also section 36 contemplate that workmen are to be represented in proceedings under the Act as a body and not as individuals. Industrial peace can be attained and secured only by collective baragaining and not otherwise. I am, therefore, of the opinion that a private settlement of the present type does not preclude the Government from making a reference to the Tribunal under the Industrial Dispntes Act.

The next question that arises assumes that there is a conciliation under section 12 of the Act but it is not accepted by another and a rival trade union which is not a party to the settlement. The legal position in this matter is rather obscure. Section 36(1) of this Act reads—

"A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed."

This section does not provide for a settlement of the dispute that may arise between two rival trade unions claming to represent the workmen in the industrial establishment. The rules framed under the Act also do not throw any light on the matter. Presumably the Conciliation Officer proceeds under section 12 and the Tribunal under section 10 must decide this dispute between the rival unions. There is, however, no provision in the Act nor in the Rules which indicates the grounds on which this dispute is to be decided. It is true that section 36 speaks of registered trade unions. A trade union, however, is registered under section 8 of the Indian Trade Unions Act, 1926 (Act No. 16 of 1926). This Act does not empower a Registrar to refuse registration on any ground which would have the effect of adjudicating upon the rival claims of trade unions to represent workmen in a given industry. I consider this matter to be an important one. This dispute between two rival unions must be decided promptly and effectively otherwise there can be no lasting industrial peace in the country. The present state of affairs may lead the employers to set up a spurious trade union as is alleged in the present case and a few workmen in an industry may combine to raise a strong, irresponsible and unreasonable demand and thus endanger industrial peace. When such positions can be taken up by employers or workmen then there can be no reconciliation at all because they will be interested in making their demands as extreme as possible. In the present case it is true that the Azad Factory Workers' Union was registered after the reconciliation proceedings of 14th March, 1956, but it may well have been registered earlier.

In any case in such a disputed claim of the two rival trade unions particularly when the dissatisfied union is the one which was the first to issue demand notice and at whose bidding some at least of the workmen resorted to strike it appears to me that the Government was fully justified and was within its right to refer the dispute to the Industrial Tribunal. It must be remembered that the Government in making a reference under section 10

is doing an administrative act and it is for the Government to decide upon the factual existence of the dispute and on the expediency of making a reference. This has been authoritatively decided by their Lordships of the Supreme Court in *The State of Madras* v. *C. P. Sarathy and another*, [1953] 4 F.J.R. 431.

I am, therefore, of the opinion, for all these reasons that the reference in the present case cannot be held to be invalid.

The result is that this petition fails and is dismissed with costs. Counsel's fee Rs. 100.

[IN THE CALCUTTA HIGH COURT.]

BENGAL CLUB LTD.

v.

S. R. SOMADDAR AND ANOTHER.

Sinha, J.

June 13, 1956.

'INDUSTRY'—MEANING OF—CLUB PROVIDING FACILITIES FOR MEMBERS—WHETHER 'INDUSTRY'—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(j).

'INDUSTRIAL DISPUTE'—MEANING OF—DISPUTE BETWEEN EMPLOYER AND INDIVIDUAL WORKMAN—WHEN 'INDUSTRIAL DISPUTE'—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(K).

INDUSTRIAL TRIBUNAL—JURISDICTION—REFERENCE OF DISPUTE TO TRIBUNAL—WHETHER GIVES JURISDICTION TO TRIBUNAL—REFERENCE OF DISPUTE WHICH IS NOT 'INDUSTRIAL DISPUTE'—EFFECT—POWER OF HIGH COURT TO ISSUE WRIT OF CERTIORARI—INDUSTRIAL DISPUTES ACT, 1947, SECTION 10.

The term 'industry' is defined in section 2(j) of the Industrial Disputes Act, 1947, in the widest possible terms and includes a club owned by a limited company which provides facilities for its members.

Where an individual workman is dismissed and his dismissal is not objected to by any union of workmen or by a majority of his fellow workmen, a claim by the workman for re-instatement will only be an 'individual dispute' between the employer and the individual workman and is not an 'industrial dispute' as defined in section 2(k) of the Act.

Under section 10 of the Industrial Disputes Act, 1947, the Government can make a reference only if in its opninion any industrial dispute exists or is apprehended. If no industrial dispute exists or is apprehended, the Government has no power to refer to the Industrial Tribunal and the Tribunal has no power *to adjudicate upon the alleged dispute referred. The Government cannot turn a dispute which is not an 'industrial dispute' into an industrial dispute by merely making an order of reference and an Industrial Tribunal does not derive jurisdiction merely by the fact that there is a reference. The High Court can in such a case issue a writ of certiorari upon the Tribunal and quash its proceedings.*

Matter No. 103 of 1956.

Ginwalla and *Amiya Bose* for the petitioner.

Arun Dutt for the respondent.

JUDGMENT.

SINHA, J.—The facts in this case are shortly as follows: The petitioner is a company incorporated, with liability limited by guarantee under the Indian Companies Act. The company maintains a club for the benefit of its members at premises No. 33 Chowringhee Road, in the town of Calcutta. The first respondent Santi Ranjan Somaddar was employed by the petitioner since 1st February, 1947, as an assistant bill clerk. It is stated that he frequently absented himself from duty so much so that during his seven years of employment he was absent for a total of almost three years. It is further stated that other office clerks have from time to time requested the secretary of the club to take some steps to find another employee or make some arrangements for the work to be done during the absence of the respondent No. 1, the burden of which fell upon them. On or about 9th June, 1954, he absented himself from duty without any leave or authority and continued to absent himself. By letters dated 25th June, 1954, and 8th July, 1954, the petitioner required the first respondent to resume his duties but he failed to do so. He also failed to furnish a satisfactory explanation for his long and obstinate absence. It appears from the correspondence that at the time of taking leave, all the information that he gave to the authorities of the club was a short letter dated 9th June, 1954, stating that he had a "very urgent piece of business". It is stated in the affidavit filed by the said respondent that his mother became ill and that is why he had to take leave. It is clear that the authorities concerned did not believe in this excuse, as it was not the first time that the first respondent had been absenting himself without leave. For example, in January, 1954, he had absented himself without any leave whatsoever for ten days. In fact it appears that he habitually did so to the great inconvenience of his employers and fellow employees. On or about 14th July, 1954, the secretary of the club informed the first respondent that the committee of the club had decided in the interest of the club and its staff to dismiss him from service, with effect from 14th July, 1954, for insubordination and for continued and determined unauthorized absence. The secretary pointed out that the committee was not satisfied with the excuses shown, for not complying with the orders made by the club authorities, as also with his past conduct and service. The respondent No. 1 protested and it seems that the Government of West Bengal, professing to act in exercise of power conferred by the Industrial Disputes Act, 1947, (hereinafter called 'the Act') referred the dispute between the petitioner and the said respondent for adjudication to the Seventh Industrial Tribunal, Calcutta (hereinafter called 'the Tribunal'). The reference was made by an order, dated 2nd May, 1955, and the dispute referred was as follows:

"Whether termination of service of Santi Ranjan Somaddar was justified?

To what relief is he entitled?"

It might be mentioned here that the cause of the second respondent has not been taken up by any trade union or by the general body of workmen employed by the petitioner. In fact, it would appear from the facts stated above that his fellow workers protested at his continued absence and demanded that the club should do something in respect of the same, so that their own burden would not be unfairly increased. The second respondent, the Seventh Industrial Tribunal, Calcutta, took up the reference and was proceeding with it. On or about 9th June, 1955, the petitioner filed his defence objecting to the jurisdiction of the said respondent. It is alleged that the said respondent is not willing to accede to the petitioner's contention and intends to proceed with the reference and to make the award. This rule was issued on 14th June, 1955, calling upon the respondents to show cause why a writ in the nature of prohibition should not be issued prohibiting the said respondent from entertaining the proceeding and/or why a writ in the nature of *certiorari* should not be made quashing the proceedings and/or why a writ in the nature of *mandamus* should not be issued directing the respondent to forbear from giving effect to the said order of reference. Further proceedings have been stayed pending the disposal of this rule.

Mr. Ginwalla appearing on behalf of the petitioner has taken two points. The first point is that the dispute is not an industrial dispute because the petitioner company cannot be said to be carrying on an industry. The second point is that in any event it cannot be an industrial dispute, being a dispute between the company and an individual workman. I shall now deal with the first point. The word "industrial dispute" is defined in section 2(k) of the Act and means any dispute or difference between employers and employers or between employers and workmen 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 or any person. Section 2(s) defines a "workman" as any person employed in any industry to do any skilled or un-skilled, manual or clerical work for hire or reward. According to section 2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

It is obvious that the definition of the word "industry" is very wide. A similar question arose before the Court of Appeal of this High Court in, *In the matter of the New Club Ltd. & another* (judgment dated September 24, industry. Such widespread extension of labour unrest is not a rare a phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large-scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between a particular employer and workman."

In the present case the dispute is entirely one between the petitioner and the respondent No. 1. It has not been taken up by any union or any other workman. On the contrary, the fellow workmen of the said respondent have bitterly complained about his conduct and wanted him to be removed. The question is whether in spite of such facts, the dispute can be called an "industrial dispute." Aiyar, J., has pointed out that the words "industrial dispute" in the Act have a wider connotation than the popular view. But the learned Judge points out that normally or fundamentally the dismissal of an individual workman by the employer is not an industrial dispute but might "develop into one" if the other workmen or the union of workmen take it up. The object of the Act is to ensure industrial harmony. A dispute between an employer and an individual workman, does not or cannot be said to effectively disturb that harmony. It is only when workmen resort to collective bargaining or are afflicted by a common unrest, can it be said that industrial harmony has been or may be disturbed. In other words, an individual dispute is not an industrial dispute as such, but may have potentialities of developing into an industrial dispute. Take the case of a workman who has been dismissed because he has stolen goods of the employer. The other employees may look upon his action with great disgust. They might all wish that the black sheep amongst them should be eliminated. To say that even in such a case, the dispute is an industrial dispute, is to shut our eyes to the very concept which underlies the use of the word in the Act. I have of course given an extreme example, but it is with such examples that, we must test a general definition. If an industrial dispute is to include individual disputes, it must include all individual disputes. In my opinion, it does not. It only includes such disputes as have been taken up by the union or the general body of workmen.

I shall now proceed to consider the decided cases upon this point. *In the matter of J. Chowdhury* v. *M. C. Banerjee and another* [1951] 2 F.J.R. 218, was a case where the editor of the Calcutta Weekly Notes, a well-known legal journal, discharged a lino-operator from service on the ground that he was negligent and fell into arrears and that he used to tamper with the machines. The discharged operator took proceedings under the Industrial Disputes Act. Mr. Chowdhury thereupon made an application to this Court under article 226. It was held by Mitter, J., that the dispute was not an industrial dispute as it was admittedly a dispute between the employer on one side and an individual employee on the other.

This case was followed by Bose, J., in *Bilash Chandra Mitra* v. *Balmer Lawrie & Co.*, [1953] 5 F.J.R. 73, holding that an industrial dispute between a single workman and his employer is not an industrial dispute.

In *Birla Brothers Ltd.* v. *Modak*, I.L.R. [1948] 2 Cal. 239, a division bench presided by Harries, C.J., it was held that a reference of a dispute as to dismissal between Messrs. Birla Brothers, Ltd., and their employees as represented by the Birla Brothers' Union, was a reference regarding an industrial dispute.

In *Western India Automobile Association* v. *Industrial Tribunal, Bombay*, [1949] 1 F.J.R. 97, the Federal Court held that a trade union could take up the case of any workman.

In *Kandan Textiles, Ltd.* v. *Industrial Tribunal, Madras*, [1949] 1 F.J.R. 217, Rajamannar, C.J., suggested that the intention of the legislature may be expressed in a more clear and unambiguous language than it was at present, to decide whether an individual dispute between an employee or employees on the one side and the employer on the other side was an industrial dispute even when a substantial section of the entire establishment or a recognized part of the establishment does not take up his or their cause. In the same case, however, Mack. J., was quite emphatic upon this point. He said as follows:

"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......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.........The greatest caution should be exercised by Government before referring any point for determination for 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."

The learned Judge referred to section 10(2) of the Act, which requires that before making a reference Government must be satisfied that the persons applying represent the "majority of each party."

Manager, United Commercial Bank, Ltd. Mathurai v. *Commissioner of Labour, Madras*, [1950] 2 F.J.R. 204, was really a case under the Madras Shops and Establishments Act (Madras Act XXXVI of 1947). In comparing the provisions thereof with the provisions of the Industrial Disputes Act, 1947, Rajamannar, C.J., said as follows:

"Though in one sense section 41 (2) of the Madras Act concerns a dispute between an employee and an employer, an individual dispute falling under it would not by itself be an industrial dispute falling within the scope of the Industrial Disputes Act. It may be that the dismissal of even one workman can become the subject of an industrial dispute but then it is no longer an individual dispute between the dismissed workmen and the employer only; it becomes a dispute between the workmen on the one hand and the employment on the other."

In the same case, Sastri, J., said :—

"A dismissed employee might question the propriety of his dismissal even though the other employees either approve of such dismissal or are indifferent to it. In such a case it must be held that the dispute is only an individual dispute between the employer and the employee affected by the dismissal and not an 'industrial dispute' under Act XIV of 1947."

In *New India Assurance Company, Ltd.* v. *Central Government Industrial Tribunal, Dhanbad*, [1953] 8 F.J.R. 326, a point was taken that under section 13 of the General Clauses Act, words in the singular shall include the plural and *vice versa* unless there was anything repugnant in the subject or context. It was argued that in section 2 (k) of the Act, the word "workmen" would include the singular so that a dispute between an employer and a single workman would be an industrial dispute as defined in the Act. Ramaswami, J., said as follows :—

"Section 13 of the General Clauses Act no doubt enacts a general rule of construction that words in the singular shall include the plural and *vice versa* but the rule is subject to the proviso that there shall be nothing repugnant to such a construction in the subject or context of the Act which is to be construed. In the present case the proper approach is to examine section 2 (k) in the setting and the context and other important provisions of the Industrial Disputes Act."

The learned Judge then examined section 10(2), 10(3), 18 and 36 of the Act and concluded as follows :—

"In the context of these important provisions of the Industrial Disputes Act it is clear that the 'industrial dispute' referred to and defined in section 2 (k) must be construed to mean not a dispute between an individual workman and the management but a dispute which, though it may originate in an action with regard to an individual workmen, has developed into a dispute in which the majority of the workmen in the establishment are interested."

This would be an appropriate place to consider the English case, *R.* v. *National Arbitration Tribunal and Another: Ex-parte South Shields Corporation* [1951] 2 All E.R. 828, upon which the learned counsel for the respondents principally relied. The dispute there was between the South Shields Corporation, a municipal body, and its town clerk. The town clerk claimed that the Corporation should apply to him the recommendation of the joint negotiating committee for town clerks and distrtct council clerks in relation to conditions of service, while the Corporation refused to alter the conditions upon which he was originally appointed. A reference was made under the "Conditions of Employment and National Arbitration Order, 1940", made under the Defence General Regulations, 1939. By article 7 of the Order, a "trade dispute" was defined as ....."any dispute or difference between employers and workmen, or between workmen and workmen....."

The order of 1940 was revoked by the Industrial Disputes Order, 1951. The question arose as to whether the dispute was an "industrial dispute". Lord Goddard held that if the matter was governed by the 1940 Order, then by section 1(1) of the Interpretation Act, 1889,......"Unless the contrary intention appears......(b) words in the singular shall include the plural and words in the plural shall include the singular." The learned Judge stated as follows:

"*Prima facie*, one would suppose that the intention of the regulation was to deal with disputes which might arise between the employers and a body of workmen which, if not settled, might lead to the interruption of work by strikes or lockouts and by the Order of 1940, the National Arbitration Tribunal was set up to whom the Minister could refer disputes......It cannot, we think, be contended that the wording of the Order of 1940 indicates any intention to exclude the application of the words of section 1 of the Interpretation Act set out above. We therefore conclude that a dispute between one employer and one workman was within the Order of 1940."

With great respect, I think that the above extracts clearly show the inconsistency in the reasoning. The learned Judge concedes that *prima facie* the regulation shows an intention of dealing with collective disputes. The Order of 1940 was made under the regulation (the Defence General Regulations, 1939). Hence, it is not at all clear why it could not be contended that the wordings of the order of 1940 intended to exclude the application of the words of section 1 of the Interpretation Act, 1889, so as to exclude individual disputes. In my opinion, it is clear that it was so intended. The definition of trade dispute in the Order of 1940 is analogous to the definition in our Industrial Disputes Act, 1947, and section 13 of the General Clauses Act might be said to correspond to section 1 of the Interpretation Act, 1889. I respectfully agree with Ramaswami, J., that in the context it is quite clear that section 13 of the General Clauses Act was not applicable, so as to make a dispute between an employer and a single employee, a trade dispute. Such an interpretation would be repugnant in the context of the provisions of the Act.

Lord Goddard placed reliance on the observation of Lord Atkinson in *Conway* v. *Wade*, 1909 A.C. 506, to the following effect:—

"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............"

As pointed out by Rajamannar, C.J., in *Kandan Textiles* v. *Industrial Tribunal*, [1949] 1 F.J.R. 217, in the context in which these words occur, they did not mean anything more than that there could not be a trade dispute when one of the parties was an outsider, that is, neither a workman nor an employer.

I think that the correct position has been laid down by Isacs, J., in *George Hudson, Ltd.* v. *Australian Timber Workers' Union*, 32 Commonwealth L.R. 413 at 441. The learned Judge says :—

"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 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 demands were not acceded to and observed for a period really indefinite.........It is a battle by the claimants not for themselves alone, and not against the respondents alone, but by the claimants as far as they represent their class, against the respondent as far as they represent their class."

The only difference is that disputes other than in public services, might now develop into industrial disputes.

Reference may also be made to *Jumbunna Coal Mine No Liability* v. *Victorian Coal Miners' Association*, Commonwealth L.R. 309, and *Standard Vacuum Oil Company* v. *Industrial Tribunal, Ernakulam*, [1952] 4 F.J.R. 101.

In my opinion, therefore, where an individual workman is dismissed and his dismissal is not objected to by any union of workmen or by a majority of his fellow workmen, that is an individual dispute between the employer and an individual workman and is not an "industrial dispute" and never developed into one. The order of reference, dated 2nd May, 1955, is therefore wholly incompetent and the respondent Tribunal has no jurisdiction to entertain it.

I must here notice a point taken by the respondents. It is argued that the Tribunal derives its jurisdiction from the order of reference and until the order of reference is avoided, it cannot be deprived of jurisdiction. Since the making of an order is an administrative act, it is argued that the only way left is to issue a writ in the nature of *mandamus* directing Government to forbear from acting upon the order, and that no such writ can be issued because there has been no demand for justice or its denial. I do not feel any difficulty upon this point. Under section 7 of the Industrial Disputes Act the Government may constitute an Industrial Tribunal for the adjudication of industrial disputes. It cannot constitute the Tribunal for any other purpose, nor can the Tribunal so constituted try any dispute other than an industrial dispute. It is true that in a given case, the Tribunal gets seisin of the matter by virtue of an order of reference made by Government under section 10 of the Act, but it must not be forgotten that section 10 is also limited in scope. Under section 10, Government can only make reference if in its opinion any industrial dispute exists or is apprehended. If no industrial dispute exists or is apprehended, Government has no power to refer to the Tribunal and the Tribunal has no power to adjudicate upon the alleged dispute so referred. In other words, it is for Government to form an opinion as to whether an industrial dispute exists or is apprehended. But what is an industrial dispute is an objective fact, and Govenment cannot turn a dispute which is not an industrial dispute into an industrial dispute by merely making an order of reference. Nor does the tribunal derive jurisdiction merely by the fact that there is a reference. The condition precedent must be satisfied, namely, that it must relate to an industrial dispute which in the opinon of Government exists or is apprehended. If the dispute itself is not and cannot be an industrial dispute, the Government cannot act under section 10 and the Tribunal cannot adjudicate upon it. The tribunal has the power to examine its own jurisdiction in a particular case—*State of Madras* v. *C. P. Sarathy*, [1952] 4 F.J.R. 431. Where the point is raised, it is its duty to do so, before entering into the reference. Since I have held that the dispute in this case is not an industrial dispute, there is no difficulty in issuing a writ in the nature of prohibition or *certiorari* upon the Tribunal. Nor, in my opinion, is there any difficulty in issuing a writ in the nature of *mandamus* upon the Government. It is true that there must be a demand for justice and its denial before entertaining an application for a writ in the nature of *mandamus*. But where it would be futile to make such a demand, it would not be a bar to relief. In *Commissioner of Police* v. *Gordhandas*, A.I.R. 1952 S.C. 16, the Commissioner of Police entirely washed his hands saying that he had acted under orders of Government. Bose, J., said as follows:—

"It is true that the actual demand was not made to the Commissioner nor was the denial by him, but he clearly washed his hands of the matter by his letter of 3/4 December, 1947, and referred the petitioner to Government under whose order, he said, he was acting. The demand made to Government and the denial by them were, therefore, in substance a demand made to the Commissioner and a denial by him."

Here the Government had already made an order of reference and the Tribunal is proceeding with the matter. The petitioner filed his objection before the Tribunal. I think that the law is satisfied.

The result is that this rule must be made absolute. There will be issued a writ in the nature of *certiorari* quashing the proceedings intiated by the order of reference, dated 2nd May, 1955, and there will be issued a writ in the nature of prohibition, prohibiting the respondent No. 2, the Seventh Industrial Tribunal, Calcutta, from proceeding with the same and there will be issued a writ in the nature of *mandamus* upon all the respondents directing them to forbear from acting upon the order of reference, dated 2nd May, 1955. This will be without prejudice to any other rights that the parties may have in respect of the dismissal of respondent 1 by the petitioner.

There will be no order as to costs.

[IN THE PUNJAB HIGH COURT.]

JAI BHARAT WOOLLEN & SILK MILLS

v.

INDUSTRIAL TRIBUNAL, PUNJAB AND OTHERS.

Bishan Narain J.

April 24, 1957.

INDUSTRIAL DISPUTE—MEANING OF—WHETHER INCLUDES DISPUTE ARISING AFTER CLOSURE OF BUSINESS—DATE OF CLOSURE—WHETHER DATE OF CLOSING DOWN OF UNDERTAKING OR DATE OF DISCHARGE OF WORKMEN—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2 (k).

As laid down by the Supreme Court in PIPRAICH SUGAR MILLS LTD. *v.* PIPRAICH SUGAR MILLS MAZDOOR UNION, [1956] 11 F.J.R. 262, *the Industrial Disputes Act, 1947, applies only to those disputes which arise out of an existing industry. The Act does not apply to disputes which arise after the closure of a business.*

Where an undertaking is closed down, in order to determine whether the industrial dispute in respect of that concern was raised before or after the date of closure, the date of closure is the date on which the workmen are actually and effectively discharged, even though the undertaking might have stopped working earlier.

Civil Writ Application No. 432 of 1956.

Bhagirath Das for the petitioners.

S. M. Sikri, Advocate-General and *Roop Chand* for the respondents.

JUDGMENT.

Jai Bharat Woollen and Silk Mills of Amritsar is a partnership concern and carries on the business of manufacturing woollen and silk textiles as its name indicates. On 27th April, 1956, the firm gave a notice to all its workers in the following terms :

"The management regrets that due to financial difficulties, other trade reasons and differences between the partners and consequent decision to dessolve the firm, it has been decided to permanently close down its entire factory and business with effect from the close of the first shift on 31st May, 1956, from which date the services of all the workers will stand terminated." The firm, however, decided to stop working of the mills with effect from about 1.30 a.m. of 28th April, 1956. Naturally the workers complained to the Labour Inspector on the same day complaining of this closure of the mills and also of the notice dated 27th April, 1956. The Labour Inspector sent a copy of this complaint to the firm on 1st May, 1956. The Textile Labour Association sent its demands to the firm on behalf of its workmen making certain claims. Thereupon conciliation proceedings were started and

ultimately on 13th June, 1956, the parties agreed under section 12(3) of the Industrial Disputes Act, 1947, to get their disputes reduced into five issues to be decided by the Industrial Tribunal. These issues read:

"(a) Whether any bonus for year 1955-56 is due to the workers? If so, what should be the quantum of such bonus and with what conditions, if any?

(b) Whether the workers are entitled to full wages during the notice period irrespective of the fact whether they have been laid off? If so, what is the amount due to each one of them?

(c) Are the workmen entitled to retrenchment relief under section 25F of the Industrial Disputes Act due to closure of the factory on 31st May, 1956? If so, what is the quantum of such relief?

(d) Are the workers entitled to any other compensation and the amount in lieu of the leave with wages under the Factories Act?

(e) Was the dismissal of Piara Lal, warper, legal and justified? If so, to what compensation is he entitled?"

Accordingly on 1st September, 1956, these very disputes were referred to the Industrial Tribunal by the Governor of the Punjab under section 10(1) (c) of the Industrial Disputes Act. The validity of this reference is challenged by the firm under article 226 of the Constitution in the present petition on the ground that the factory had ceased to work in the early hours of 28th April, 1956, and all these disputes had arisen thereafter and therefore the agreement under section 12(3) and also the reference are invalid. This petition is contested on behalf of the State.

Both parties rely on the decision of the Supreme Court in *Pipraich Sugar Mills* v. *Pipraich Sugar Mills Mazdoor Union* [1957] 11 F.J.R. 262, and the learned counsel of each side urges that the judgment supports his contention. It is therefore necessary to discuss this judgment at some length. Their Lordships of the Supreme Court in this judgment held as a matter of law that "The view therefore expressed in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras* [1951] 3 F.J.R. 420, and *K. M. Padmanabha Ayyar* v. *State of Madras* [1954] 11 F.J.R. 257, that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in *K. M. Padmanabha Ayyar* v. *State of Madras* [1954] 11 F.J.R. 257 fall outside the purview of the Industrial Disputes Act. And that will *a fortiori* be so, if a dispute arises if one such can be conceived after the closure of the business between the quondam employer and employees," Their Lordships construing section 3 of the Act further held that "That section only requires, apart from other conditions, with which we are not concerned, that there should be an industrial dispute before there can be a reference and we have held that it would be an industrial dispute if it arises out of an existing industry. If that condition is satisfied, the competence of the State for taking action under that section is complete, and the fact that the industry has since been closed can have no effect on it". The test for determining the power to refer the dispute is laid down by their Lordships of the Supreme Court in these words—

"We think that on a true construction of section 3, the power of the State to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dipute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business."

On the basis of these principles the learned counsel for the petitioners urges that the work in the present case ceased on 28th April, 1956, on which date the business ceased to be in existence and that all the disputes in the present case arose thereafter.

On the other hand the learned Advocate-General has urged that if the rules laid down by the Supreme Court are applied then the business did not cease to exist till 31st May, 1956, and admittedly all disputes had arisen prior to this date and for this purpose he had relied on the decision and facts given by the Supreme Court in applying the rules laid down by their Lordships as reproduced above. The facts in that case were these. With permission of the Government sugar mills situated in Pipraich in Gorakhpur District were sold to a Madras firm in October, 1950, and under the agreement the machinery had to be dismantled and transported to Madras. As the crushing season was on, the vendors took the mills on lease till the conclusion of the crushing season which in fact ended at the end of January, 1951. The workers learning of this transaction made endeavours to persuade the Government, though unsuccessfully, to withdraw the permission to sell the mills. They thereupon decided to go on strike from 12th January, 1951. Naturally negotiations began between the parties and on 3rd January 1951, the employers offered 25 per cent. of the profits from the sale to the workers provided they did not go on strike. After this arrangement the strike was called off. As machinery had to be dismantled for transport to Madras, the workers were asked to help the management in doing so. The workers, however, refused. The employers on 28th February, 1951, gave a notice that those workers who did not co-operate in dismantling the machinery will be discharged with effect from 1st March, 1951 and on 14th March, 1951 they gave notice that the machinery had to be delivered on 15th March, 1951 to the vendees and that the workers will be paid up to 16th March, 1951, only. This latter date was, however, at the request of the workers, extended to 21st March, 1951 on which date they were fully discharged. The workers on 19th April, 1951 claimed the bonus of 25 per cent. under the January, 1951 agreement, but this claim was repudiated by the employers. This dispute was referred to the Industrial Tribunal on 16th November, 1951. On these facts their Lordships of the Supreme Court came to the conclusion that the business was closed on 21st March, 1951, i.e., the date on which the workers were actually discharged.

[To be reprinted]

It is obvious that on this reasoning the business in the present case closed on 31st May, 1956, after the close of the first shift as intimated to the workers in the notice dated 27th April, 1956. It is true that the mills did not work after 28th April, 1956, but that is of no significance. In the Pipraich Sugar Mills case the mills had actually been dismantled before 15th March, 1951 and yet their Lordships came to the conclusion that the business was not closed till 21st March, 1951, i.e., the date on which the workers were actually discharged. In the present case the workers were effectively discharged only on 31st May 1956. It was argued on behalf of the employers that the notice up to that date was given under section 25F and that in fact the business was closed on 28th April, 1956. There is no reference to section 25F in the notice. In any case whatever the reason the workers were not discharged before the expiry of the notice. No notice of discharge was ever given for any date prior to 31st May 1956. It must therefore be held that the business was closed on 31st May, 1956. Obviously all the disputes referred to the Tribunal relate to a date prior to that date. All the rights claimed by the workers in this case arose and had accrued on a date prior to 31st May 1956. It is obvious that these disputes cannot be said to have arisen after the closure of the business between the quondam employer and employees. Under the notice the workmen remained in employment till after the first shift on 31st May, 1956. It is also manifest from the fact that the conciliation proceedings started between the parties after 28th April 1956. It is therefore clear that the reference of these disputes for adjudication by the Industrial Tribunal cannot be held to be invalid on these grounds.

No other point was argued before me. The result is that this petition fails and is dismissed with costs.

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