2013 eGLR_HC 10005635

Before the Hon'ble MR. BHASKAR BHATTACHARYA, JUSTICE the Hon'ble MR. J B PARDIWALA, JUSTICE

ADITYA BIRLA INSULATORS Vs. COMMISSIONER OF LABOUR AND ORS.

LETTERS PATENT APPEAL No: 498 of 2013 , Decided On: 13/08/2013

(A) ***

K.S.NANAVATI, NANAVATI ASSOCIATES, SHRUTI PATHAK, P.C.CHAUDHARI, R.D.RAVAL, PARITOSH CALLA

MR. BHASKAR BHATTACHARYA

1. This Letters Patent Appeal under clause 15 of the Letters Patent is at the instance of an employer and is directed against order dated 26th February 2013 passed by the learned Single Judge of this Court in Special Civil Application No. 670 of 2013 by which the learned Single Judge, after passing some direction upon the Industrial Tribunal, refused to interfere with the order impugned.

2. Being dissatisfied, the unsuccessful applicant of the writ-application has come up with the present Letters Patent Appeal.

3. In the Special Civil Application No. 670 of 2013 filed by the appellants before us, the following prayers were made:

(a). Your Lordship be pleased to issue a writ of mandamus order/or any other appropriate writ, order or direction in the like nature quashing and setting aside the order dated 19.12.2012 passed by the respondent no.1 Commissioner of Labour, State of Gujarat (Annexure-A).

(b). During the pendency of hearing and final disposal of the petition, be pleased to stay the further operation, implementation and effect of order dated 19.12.2012 passed by the respondent no.1 Commissioner of Labour, State of Gujarat (Annexure-A) and be pleased to stay the further proceedings before the Industrial Tribunal, Vadodara, pursuant to the order of Reference at Annexure-A.

4. The order dated 19th December 2012 passed by the respondent No.1, the Commissioner of Labour, State of Gujarat, is an order of Reference in terms of Section 10 of the Industrial Disputes Act, 1947, [the Act, for short, hereafter] by which the alleged disputes between the employer and the employee about the revision of wages and allowances were referred to the Industrial Tribunal, Vadodara, for adjudication at the instance of the respondent No.2-Union.

5. The case made out by the appellant in the Special Civil Application may be summed up thus:

[a]. The appellant is engaged in the business of manufacturing insulators and other electrical products and its factory is situated at Village:Meghasar, near Halol in District Panchmahals.

[b]. The Respondent no.3-

Rajshree Kamdar Sangh has been commanding membership of overwhelming majority of workmen employed in the factory of the appellant since many years. The said Union had previously entered into two long term settlements on behalf of the workmen of the appellant with regard to revision of wages, allowances and other conditions of service. The agreed period of operation of previous settlement dated December 20, 2006 was for a period up to December 31, 2011.

[c]. On the expiry of the said settlement, the respondent no.3 Sangh had submitted its charter of demand dated January 02, 2012 for revision of wages, allowances and other conditions of service.

[d]. After ascertaining the membership of the respondent No.3, the Conciliation Officer registered a Conciliation Case being No.13/12 and held preliminary discussions on various dates and ultimately, the charter of demand of respondent No.3-Sangh was admitted in the conciliation proceedings on 9th July 2012.

[e]. The conciliation proceedings were held on various dates and ultimately, further conciliation proceedings were fixed on 4th October 2012.

[f]. In the conciliation proceeding held on 4th October 2012, the appellant and the respondent No.3-Sangh informed the Conciliation Officer that settlement procedure was going on and they jointly applied for an adjournment. Accordingly, the conciliation proceedings were adjourned to 15th October 2012.

[g]. In the conciliation proceedings held on 5th October 2012, the Conciliation Officer was informed by the appellant and the respondent No.3-Sangh that the settlement had been arrived at and the process of filing undertaking by each individual workman accepting the settlement was going on. On that basis, the conciliation proceedings were adjourned to 29th December 2012.

[h]. On 29th December 2012, the conciliation officer was informed about the settlement and process of accepting the settlement was going on.

[i]. By 5th November 2012, out of 1107 workmen, 969 workmen had individually accepted the settlement by giving undertaking.

[j]. Meanwhile, few of the workmen joined the respondent no.2 Union viz. Panchmahal Jilla General Works Kamdar Mandal.

[k]. The respondent No.2-Mandal also submitted its charter of demand dated 31st December 2011 and sought intervention of the Conciliation Officer who registered the Conciliation Case being No. 2/12 regarding the charter of demands of respondent No.2-Mandal.

[l]. The last date of conciliation proceedings in Conciliation Case being No. 2/12 was 23rd August 2012.

[m]. The conciliation proceedings pertaining to the charter of demand of the respondent No.2-Mandal resulted in failure and such failure report was submitted by the Conciliation Officer on 12th September 2012.

[n]. On the basis of the said failure report, the respondent No.1-Commissioner of Labour, had made the impugned order of Reference on 19th December 2012 overlooking the fact that the conciliation officer had recorded the settlement dated 4th October 2012 arrived at between the appellant and the respondent No.3-Sangh on 5th November, 2012.

6. The learned Single Judge, after hearing the learned counsel for the parties, was of the view that having regard to the materials on record, His Lordship should not exercise discretionary power at that stage. However, the learned Single Judge observed that it would be open for the parties to raise all contentions before the competent authority who shall hear and decide the preliminary issue first.

It was further observed that such a decision shall be taken within a period of three months from the date of receipt of the order of the Court, after giving due opportunity of hearing to the parties concerned. The learned Single Judge further observed that after deciding the preliminary issue, the competent authority shall proceed to hear and decide the main Reference on merits without being influenced by the order passed by the Court. The learned Single Judge further observed that if the interim application was filed, the said application would be entertained after the preliminary issue was decided by the concerned Tribunal.

7. Being dissatisfied, the employer has come up with the present Letters Patent Appeal under clause 15 of the Letters Patent.

8. Mr. Nanavati, the learned Senior Advocate appearing on behalf of the appellant, strenuously contended before us that the learned Single Judge acted illegally in directing the Industrial Tribunal to hear out the question of the existence of the valid settlement as a preliminary issue notwithstanding the fact that it was a fit case of quashing the Reference as there was already a settlement between the employer and the respondent No.3-Sangh representing the majority of the workmen. Mr. Nanavati further submits that there was no justification for forcing the appellant to submit before the Reference.

9. The aforesaid contention of Mr. Nanavati has been supported by Mr. Rawal, the learned advocate appearing on behalf of the respondent No.3-Sangh but Mr. Chaudhary, the learned advocate appearing on behalf of the respondent No.2-Mandal supported the impugned order passed by the learned Single Judge.

10. After hearing the learned counsel for the parties and after going through the materials on record, we find that it is now a well-settled law that a writ-court should not enter into the question whether there was sufficient material before the appropriate authority to refer a dispute to the Labour Court or Industrial Tribunal in terms of Section 10 of the Act.

10.1 In this connection, we may profitably refer to the following observations of the five-judge-bench of the Supreme Court in the case of STATE OF MADRAS V. C.P. SARATHY AND ANOTHER, reported in AIR 1953 SC 53, wherein the Supreme Court had made the following observations on the question as regards the power of a writ-court to decide the question of sufficiency of the materials in support of a Reference under Section 10 of the Act:-

13. It was next contended that the reference was not competent as it was too vague and general in its terms containing no specification of the disputes or of the parties between whom the disputes arose. Stress was laid on the definite article in cl. (c) and it was said that the Government should crystallise the disputes before referring them to a Tribunal under S. 10 (1) of the Act. Failure to do so vitiated the proceedings and the resulting award. In upholding this objection, Govinda Menon J.,

who dealt with it in greater detail in his judgment, said "Secondly, it is contended that the reference does not specify the dispute at all. What is stated in the reference is that an industrial dispute has arisen between the workers and the management of the cinema talkies in the City of Madras in respect of certain matters. Awards based on similar references have been the subject of consideration in this Court recently. In Ramayya Pantulu v. Kutty and Rao (Engineers) Ltd. l949-1Mad L J 231, Horwill and Rajagopalan JJ. had to consider an award based on similar references without specifying what the dispute was".

After referring to the decision of the Federal Court in -- India Paper Pulp Co. Ltd, v. India Paper Pulp Workers Union 1949 F C R 348, and pointing out that though the judgment of the Federal Court was delivered on 30-3-1949, it was not referred to by the High Court in Kandan Textile Ltd. v. Industrial Tribunal Madras, 1949-2 Mad L J 789, which was decided on 26-8-1949, the learned Judge expressed the view that "the trend of decisions of this Court exemplified in the cases referred to by me above has not been overruled by their Lordships of the Federal Court". Basheer Ahmed Sayeed J., however, sought to distinguish the decision of the Federal Court on the facts of that case, remarking "that a reading of the order of reference that was the subject-matter of the Federal Court decision conveys a clear idea as to a definite dispute, its nature and existence and the parties between whom the dispute existed". It is, however, clear from the order of reference which is fully extracted in the judgment that it did not mention what the particular dispute was and it was in repelling the objection based on that omission that Kania C. J. Said:

"The Section does not require that the particular dispute should be mentioned in the order; it is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes such a reference.

14. This is, however, not to say that the Government will be justified in making a reference under S. 10 (1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry. It is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference under S. 10 (1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which

it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

15. Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lock-out, either existing or imminent, should be ended or averted without delay, which under the scheme of the Act, could be done only after the dispute giving rise to it has been referred to a Board or a Tribunal (vide Ss. 10 (3) and 23). In such cases the Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to enquire what specific points the contending parties are quarrelling about, and it would seriously detract from the usefulness of the statutory machinery to construe S. 10 (1) as denying such power to the Government.

We find nothing in the language of that provision to compel such construction. The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But, beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference under S. 10 (1) or to specify them in the order.

11. It appears that the Supreme Court in the subsequent case of SECRETARY, INDIAN TEA ASSOCIATION V. AJIT KUMAR BARAT AND OTHERS reported in AIR 2000 SC 915 laid down the following proposition of law by relying upon the abovementioned view:

In Sultan Singh v. State of Haryana (1996) 2 SCC 66 this Court held that an order issued under S. 10 of the Act is an administrative order and the Government is entitled to go into the question whether industrial dispute exists or is apprehended and it will be only a subjective satisfaction on the basis of material on record and being an administrative order no lis is involved.

This law on the point may briefly be summarized as follows:-

1. The appropriate Government would not be justified in making a reference under S. 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under S. 10 of the Act is an administrative order and not a judicial or quasi judicial one and the Court, therefore, cannot

canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under S. 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4.If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

12. Thus, if Reference is refused by the appropriate authority, there is scope of investigation at the instance of a writ-court if it is shown that the refusal is based on perverse finding or on extraneous ground. But in the case of an order making Reference , the same can be challenged in a writ-jurisdiction only if what was referred by the Government was not an industrial dispute within the meaning of the Act.

The same view has been taken by a three-judge-bench of the Supreme Court in the case of BOMBAY UNION OF JOURNALISTS AND OTHERS V. THE STATE OF BOMBAY AND ANOTHER reported in AIR 1964 SC 1617 where following observations were made:

It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal.

But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its powers to make a reference should be exercised under S. 10 (1) read with S. 12 (5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Govt. may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Govt. is entitled to make in dealing with a dispute under S. 10(1), and so, the argument

that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3, cannot be accepted.

13. In the case before us, the plea taken by the appellants that there was a valid settlement and, therefore, no Reference should be made is not only a disputed question of fact specifically controverted by the respondent No.2 but also such question cannot be finally decided by the authority referring the dispute under section 10 of the Act and can only be lawfully decided by the Labour Court or Industrial Tribunal.

14. At this stage we may profitably refer to the decision of the Supreme Court in the case of PREM KAKAR V. STATE OF HARYANA reported in (1976) 3 SCR 1010.

In the said case a question arose as to whether an employee was a workman. The Government informed the workman that his case was not covered by the definition of the term "workman" under the Act, hence, refused to make a Reference . The workman approached the High Court for writ of mandamus which was dismissed. The Supreme Court was moved against such decision of the High Court but the appeal was dismissed. In appeal, it was contended before the Supreme Court that the question whether an employee was a workman or not is a disputed question of facts and law and, therefore, such question could only be decided by Labour Court on a Reference and not by the State Government while exercising its powers under S. 12(5) of the Act, which was rejected. The Supreme Court held that the order of the Government acting under S. 10(1) read with S. 12(5) of the Act passed after subjective satisfaction is an administrative order and not a judicial or a quasi-judicial one. It was also held that in entertaining a writ of mandamus against such an order, the Court does not sit in appeal and is not entitled to consider the propriety or the satisfactory character of the reasons. However, according to the Supreme Court, if it appears from the reasons given in the order that the appropriate government has taken into account any consideration which is irrelevant or foreign, then the Court may, in a given case, consider the case of writ of mandamus. The above finding was recorded in connection with a case where the Reference was rejected.

15. The case of TELCO CONVOY DRIVERS MAZDOOR SANGH AND ANOTHER V. STATE OF BIHAR AND OTHERS reported in AIR 1989 SC 1565 is also one where the Reference was refused with a finding that the concerned person was not a workman. In such a case the Supreme Court passed a direction for Reference with the following observations:

It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 ; M.P. Irrigation Karamchari Sangh v. State of M.P., (1985) 2 SCR 1019; Shambu Nath Goyal v. Bank of Baroda, Jullundur, (1978) 2 SCR 793.

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sanghs case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.

16. In the case before us, the appellant contends that the referring authority should not have referred the dispute in view of the existence of an earlier lawful settlement between the employer and the respondent no. 3 and the referring authority should have accepted such settlement as a lawful settlement and consequently, should have refused the Reference and in these writ-proceedings we should, after setting aside the Reference , ourselves decide that question. We are afraid, the adoption of such course will make the provision of Section 10 nugatory.

17. In the case of AVON SERVICES PRODUCTION AGENCY VS. INDUSTRIAL TRIBUNAL, HARYANA reported in AIR 1979 SC 170, the Supreme Court reiterated the principles laid down in the case of State of Madras (supra) and made the following observations:

Section 10 (1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10 (1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character.

Thus the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters (see State of Madras V. C. P. Sarathy, 1953 SCR 334).

18. In the case before us, it is nobody s case that what was referred to the Tribunal was not an industrial dispute; the contention of the appellant is that in view of the existence of a lawful settlement between the appellant and the respondent no.3, we should hold that there was no sufficient material to refer the dispute. In view of the above decisions, it is for the Industrial Tribunal to arrive at a conclusion whether there was a lawful settlement binding upon workmen as contended by the appellant.

19. Mr. Nanavati, the learned counsel appearing on behalf of the appellant relied upon a three-judge-bench decision of the Supreme Court in the case of NATIONAL ENGINEERING INDUSTRIES LTD. V. STATE OF RAJASTHAN reported in (2000) 1 SCC 371 in support of his contention that the sufficiency of the materials to form an opinion as to the existence of a dispute justifying Reference can be gone into by a writ-court in an application under Article 226 of the Constitution.

20. Mr. Nanavati also relied upon the following three decisions of the Supreme Court:

1. TATA CHEMICALS v. WORKMEN, TATA CHEMICALS reported in AIR 1978 SC 828.

2. TATA ENGINEERING AND LOCOMOTIVE CO. LTD. vs. WORKMEN reported in 1981 (4) SCC 627.

3. ANZ GRINDLAYS BANK LTD. v. UNION OF INDIA reported in 2005 (12) SCC 738.

21. According to Mr. Nanavati, it is within the province of a writ-court to enter into the question whether there was sufficient material to make a Reference or not.

22. In our opinion, the competent authority having referred the dispute under section 10 of the Act, it is needless to mention that in the said Reference, the appellant will have all the rights to advance its case that having regard to the fact that the dispute has been settled by the majority of the workmen, the Reference should be decided in favour of that settlement. In such circumstances, in our opinion, the learned Single Judge rightly decided not to enter into that question but left it upon the concerned Industrial Tribunal to decide the question of a valid settlement as a preliminary issue as pointed out by five-judge-bench decision of the Supreme Court referred to above. The position would have been, however, different if the Reference was refused by the authority under Section 10 with the finding that there was a valid settlement. In such a case, a writ-application would have been maintainable challenging the action of the authority as was the case of Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar (supra).

23. We now propose to deal with the decisions relied upon by Mr. Nanavati.

24. In the case of NATIONAL ENGINEERING INDUSTRIES LTD. [supra], it appears that a three-judge-bench of the Supreme Court was dealing with a case of Reference in the following facts:

24.1 Appellant was a company registered under the Companies Act with its registered office at Calcutta. One of its factories was located at Khatipura Road, Jaipur in the State of Rajasthan. There were three unions with which the courts were concerned and those were: (1) National Engineering Industries Labour Union (for short, the Labour Union); (2) National Engineering Industries Staff Union (for short, the Staff Union); and (3) the Workers Union referred to above. It was stated that Labour Union had the majority of the workers on its roll; was recognized, and the representative union and registered as such under the provisions of the Act as amended by the Rajasthan Industrial Disputes Amendment Act, 1958. In the year1983, all the three unions made their charter of demands. A tripartite settlement was arrived at between the management, Labour Union and the Staff Union. In respect of demands made by the Workers Union, a failure report was submitted. Workers Union made representation to the State Government for referring their disputes for adjudication. This request was, however, declined by the State Government in view of the tripartite settlement already reached between the representative union, the Staff Union and the management. The settlement was to remain valid and operative till September, 1986. All the three unions made fresh charter of demands in 1986 which were identical in almost all respects. Conciliation proceedings were initiated and though failure report was submitted by the Conciliation Officer in respect of the proceedings regarding the Workers Union, a conciliation settlement was arrived at with the Labour Union and the Staff Union. It was a conciliation settlement and was to be in operation for a period of three years ending September 30, 1989. It was not disputed that all the employees of the

appellant including the members of the Workers Union accepted the benefits under this tripartite settlement.

24.2 On the charter of demands raised by the Workers Union and on which the Conciliation Officer had submitted a failure report, the State Government did not make any order for Reference of the disputes nor did it refuse to make Reference . Workers Union then filed a writ- petition in the High Court requiring the State Government to make Reference of their disputes to the Industrial Tribunal under the provisions of the Act. This writ-petition was decided by a Division Bench of the High Court on March 23, 1989 whereby it was directed to the State Government to decide the question on the failure report of the Conciliation Officer whether to make or not to make the Reference . The State Government was required to decide the question within two months from the date of the judgment, i.e., March 23, 1989. High Court also observed that it would be open to the appellant to raise all the contentions before the State Government and the State Government would or would not make a Reference only after hearing the parties. However, before the decision of the High Court, the State Government, in the meantime, issued the notification dated March 17, 1989 for Reference of the disputes relating to the demands raised by the Workers Union. The appellant thereafter submitted a representation dated April 3, 1989 to the State Government drawing its attention to the decisions of the High Court and requesting that the State Government might withdraw the Reference and take a fresh decision after hearing the appellant. This, it appears, was not acceded to. The fact that the State Government had already made a Reference on March 17, 1989 was not brought to the notice of the High Court when it decided the writ petition of the Workers Union on March 23, 1989. Since the State Government did not accept the request of the appellant, it filed a writ-petition in the High Court challenging the validity of the Reference . The writ-petition was dismissed by the learned single Judge. The appeal filed by the appellant before the Division Bench also met the same fate. That is how the matter had come before the Supreme Court, after the said Court granted leave to appeal against the judgment of the High Court.

25. In the above facts, the Supreme Court made the following observations:

The Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, the Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers Union that tripartite settlement is in any way mala fide. It has been contended by the Workers Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such was not binding on the members of the Workers Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings.

28. State Government failed to give due consideration to the direction of the High Court in its judgment dated 23-3-1989. The State Government also failed in its duty to bring to the notice of the

High Court its notification dated 17-3- 1989 making the impugned reference. It appears to us that the reference had occasioned while the judgment had been reserved by the High Court. In any case it was expected of the State Government to bring to the notice of the High Court before making a reference its decision to make the reference. After the judgment had been announced and directions issued by the High Court to hear the appellant it was incumbent of the State Government, in the circumstances of the case, to recall the reference. It could not direct the appellant to raise its objection to reference before the Industrial Tribunal for which Industrial Tribunal certainly lacked jurisdiction. The State Government before making the reference did not consider all the relevant considerations which would clothe it with the power to make the reference under Section 10 of the Act. We find substance in the submissions of Mr. Pai. Wholesale reference of all the disputes in the charter of demands of Workers Union for adjudication was also bad inasmuch as many of such disputes were already the subject matter of the tripartite settlement. This also shows non-application of mind by the State Government in making the reference.

26. Thus, in the above background pointed out by the Supreme Court in paragraph 28 above, the Supreme Court decided the matter by passing the following direction:

When notice was issued on the special leave petition proceedings on the reference were stayed. Earlier also during the pendency of the writ petition before the High Court, which led to the impugned judgment, proceedings had been stayed. There has not been any progress before the Industrial Tribunal and all these years have passed. During the course of hearing we have been told that there have been even two more settlements and also that President of the Workers Union is now himself the President of the Labour Union. Even otherwise it would be futile to allow the reference to continue after lapse of all these years. This is apart from the fact that in our view reference in itself was bad as the tripartite settlement did bind the members of the Workers Union as well.

30. This appeal is accordingly allowed. Impugned judgment of the High Court is set aside and the Notification dated 17-3-1989, issued by the State Government under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, is quashed. In the circumstances there will be no order as to costs.

27. In the case before us, the alleged prior settlement between the appellant and the respondent no. 3 is very much disputed unlike the above case. Thus, the said decision cannot apply to the facts of the present case and in view of the principles laid down in the case of State of Madras (supra) which has not yet been overruled by any larger bench of the Supreme Court and rather followed as indicated by us in this judgment, we are of the opinion, that we should not interfere with the decision of the learned Single Judge.

28. In the case of TATA ENGINEERING AND LOCOMOTIVE CO. LTD. [supra], the matter went to the Supreme Court from the findings of an award. Therefore, in that decision, there was no question as to whether the High Court, under Article 226 of the Constitution could enter into the

question as to the sufficiency of the materials before the appropriate authority for referring the dispute. We, therefore, find that the said decision is not applicable to the facts of the present case.

29. In the case of ANZ GRINDLAYS BANK LTD. [supra], a two-judge-bench of the Supreme Court was considering whether under Article 226 of the Constitution, a High Court can scrutinize whether there was sufficient ground for making a Reference under section 10 of the Act as the aggrieved party can ventilate this grievance before the Industrial Tribunal. In answering the aforesaid question, the Supreme Court made the following observations in paragraph 14 of the judgment:-

14. According to learned counsel the writ petition is premature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised.

30. From the above observations, it appears that the Supreme Court partly accepted the submissions that for considering the question whether there was sufficient material on record for making Reference evidence is required to be adduced. In such case, disputed question of facts and law should not be adjudicated in a writ-application under Article 226 of the Constitution of India but in a case where no evidence is required to be considered for examining the issue and by mere reading of the Reference , it appears that the Reference that has been made does not relate to any industrial dispute, such question can be examined in proceedings under Article 226 of the Constitution.

31. In the case before us, for deciding the question whether there was a valid settlement binding between the parties or not requires giving of evidence and thus, even according to the decision of the Supreme Court in the case of ANZ GRINDLAYS BANK LTD. [supra], this is not a fit case where the High Court, sitting in the writ jurisdiction should investigate such disputed question of fact.

32. In the case of TATA CHEMICALS [supra], the matter went before the Supreme Court out of a proceeding under Article 226 of the Constitution of India where the subject-matter of such writ-application was an award dated February 21, 1977 of the Industrial Tribunal, Gujarat, and while considering the merit of the award, the Supreme Court made an observation as regards the effect of settlement during conciliation or otherwise and its binding nature. Therefore, in the case of TATA

CHEMICALS [supra], the Supreme Court had no occasion to consider whether a Reference under section 10 of the Act could be successfully challenged under Article 226 of the Constitution of India for the purpose of showing that there was no existence of sufficient material before the authority making the Reference .

33. We, thus, find that in the case before us, the learned Single Judge rightly refused to enter into the said question and left it to the Industrial Tribunal to decide the question of settlement as a preliminary issue.

34. We, therefore, find that the decisions cited by Mr. Nanavati do not help his client in deciding the issue before us.

35. We, thus, find no merits in this appeal and consequently, the same is dismissed.

36. In view of the dismissal of the appeal, the connected Civil Application does not survive, and stands disposed of accordingly.

37. In the facts and circumstances of the case, however, there will be no order as to costs.

Application disposed of.