1951 INSC 26

SUPREME COURT OF INDIA

The United Commercial Bank Ltd.

Vs.

Their Workmen (and other cases) Union of India – Intervener

C.A.No.35 to 50 of 1951

(Saiyid Fazal Ali, M. Patanjali Sastri,JJ., M.C.Mahajan and B.K.Mukherjea,JJ., S.R.Dass Vivian Bose,JJ.,)

09.04.1951

JUDGMENT

H.J.Kania,C.J.,

1. In these appeals the question whether the Industrial Tribunal (Bank Disputes) had jurisdiction to make the awards has been directed by the Court to be tried as a preliminary issue. The decision depends on the true construction of sections 7, 8 15 and 16 of the Industrial Disputes Act. On this question, the agreed statement of facts shows that by a notification of the Government of India dated the 13th June 1949, the Central Government constituted an Industrial Tribunal for the adjudication of industrial disputes in banking companies consisting of Mr. K. C. Sen, chairman, Mr. S. P. Varma and Mr. J. N. Mazumdar. A second notification dated the 24th August, 1949, was thereafter issued as follows :- "In exercise of the powers conferred by sub-section 1 of section 8 of the Industrial Disputes Act, the Central Government was pleased to appoint Mr. N. Chandrasekhara Aiyar as a member of the IndustrialTribunal constituted by the notifications of the Government of India in the Ministry of Labour dated the 13th June 1949, in the place of Mr. S. P. Varma whose services have ceased to be available." The Tribunal commenced its regular sittings at Bombay from the 12th to the 16th of September, 1949. It thereafter sat at Delhi and Patna between the 19th September, 1949, and 3rd April, 1950. Further sittings were held, at some of which Mr. Mazumdar was absent on various dates and Mr. Chandrasekhara Aiyar was absent from the 23rd November 1949, to the 20th of February, 1950, as his services were placed at the disposal of the Ministry of External Affairs as a member of the Indo-Pakistan Boundary Disputes Tribunal. Between the 23rd November 1949, and 20th February, 1950, Mr. Sen and Mr. Mazumdar together sat at several places and made certain awards. Those awards have been accepted by the Government under section 15 of the Act and published in the Gazette as the awards of the Tribunal. The Tribunal held its sittings in Bombay to hear general issues from the 16th January, 1950, and concluded them on the 3rd April, 1950. In the agreed statement of facts, it is stated that the services of Mr. Chandrasekhara Aiyar were not available to the Tribunal from the afternoon of 23rd November, 1949, to the forenoon of 20th February, 1950. From the 16th January 1950 upto 20th February, 1950, several matters,

particularly including 15 items covering, inter alia. Issues 1, 2, 3, 4, 15, 23, 27, 28, 33, 34, 37 and dealing with the question of the jurisdiction of the Tribunal in respect of officers regarding banks having branches in more than one province and banks in liquidation, question of retrospective effect to be given to the award, question relating to provident and guarantee fund and allowances to special categories of workmen, were dealt with by the Tribunal. From the notes of the proceedings of the Tribunal it appears that as numerous banks and workmen were parties to the proceedings, some workmen who had not found it convenient to attend throughout appeared and put forth their views in respect of the aforesaid issues and questions after Mr. Chandrasekhara Aiyar started his work from the afternoon of the 20th February, 1950, again by sitting with Mr. Sen and Mr. Mazumdar.

2. The jurisdiction of the Tribunal of the aforesaid three persons to make the award is disputed on two grounds : (1) That when Mr. Chandrasekhara Aiyar's services ceased to be available, as mentioned in the agreed statement of facts, the remaining two members had to be re-appointed to constitute a Tribunal. (2) That when Mr. Chandrasekhara Aiyar began to sit again with Mr. Sen and Mr. Mazumdar from the forenoon of 20th February, 1950, it was imperative to issue a notification constituting a Tribunal under section 7 of the Industrial Disputes Act. The argument is that in the absence of Mr. Chandrasekhara Aiyar the two members had no jurisdiction to hear anything at all without the appropriate notification and that Mr. Chandrasekhara Aiyar's services having ceased to be available on the 23rd of November, 1949, he cannot sit again with the other two members to form the Tribunal in the absence of a notification under section 7.

3. In order to appreciate the correct position, it is necessary to consider the scheme of the Industrial Disputes Act. It envisages the establishment of a conciliation Board, a Court of inquiry and a Tribunal for adjudication. Relevant portions of sections 5, 6, 7, 8, 15 and 16 of the Act which only are material for the present discussion run as follows :-

> 5. (1) "The appropriate Government may as occasion arises by notification in the official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.
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> (2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.
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> (3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party :
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> (4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number.

4. Provided that if the appropriate Government notifies the Board that the services of the chairman or any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed."

6. (1) "The appropriate Government may as occasion arises by notification in the official Gazette constitute a Court of inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number.

5. Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed."

7. (1) "The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as the chairman.

(3) Every member of the Tribunal shall be an independent person :

(a) who is or has been a Judge of a High Court or a District Judge, or

(b) is qualified for appointment of a Judge of a High Court;

6. Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has, or is intended to have, its usual place of sitting."

8. (1) "If the services of the chairman of a Board or the chairman or other member of a Court or Tribunal cease to be available at any time, the appropriate Government shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Board, Court or Tribunal so reconstituted.

(2) Where a Court or tribunal consists of one person only and his services cease to be available the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

(3) Where the services of any member of a Board other than the chairman have ceased to be available, the appropriate Government shall appoint in the manner specified in sub-section (3) of section 5 another person to take his place, and the proceedings shall be continued before the Board so reconstituted."

15. (1) "Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit it award to the appropriate Government.

(2) On receipt of such award, the appropriate Government shall by order in writing declare the award to be binding :

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(4) Save as provided in the proviso to sub-section (3) of section 19, an award declared to be binding under this section shall not be called in question in any manner."

16. "The report of a Board or Court and the award of a Tribunal shall be in writing and shall be signed by all the members of the Board, Court or Tribunal, as the case may be :

Provided that nothing in this section shall be deemed to prevent any member of the Board, Court or Tribunal from recording a minute of dissent from a report or award from any recommendation made therein."

7. Confining our attention to the aspect of absence of members at the sittings of the different bodies and what results follow therefrom, it is clear that under section 5(4) when a member of a Board of Conciliation is absent or there is a vacancy, the Board is permitted to act, notwithstanding such absence, provided there is the prescribed quorum. Such quorum is fixed by the rules framed under the Act. According to the proviso to this sub-section however, if the appropriate Government notifies the Board that the services of the chairman or any other member have ceased to be available, the Board shall not act until a new chairman or a member, as the case may be, has been appointed. Reading these two parts together, it is therefore clear that a distinction is drawn between the situation arising from the absence of the chairman or any of its members and a vacancy in the Board, and the position when the Government has intimated that the services of a chairman or member have ceased to be available. The words "having the prescribed quorum" put a further limitation on the right of the remaining members of the Board to act, when all of them are not acting together. The proviso thus makes it clear that when the services of a chairman or member have ceased to be available and that fact has been notified to the Board by the appropriate Government, the remaining members have no jurisdiction to act in the name of the Board. Thus all the contingencies of temporary or casual absence, as well as permanent vacancy, and the contingency of the chairman or a member's services having ceased to be available are

contemplated and provided for. In the same way and in the same terms, provision is made in respect of the Court of Inquiry in section 6(3). The provision as regards the Tribunal are found in section 7. No other section deals with the establishment of the Tribunal. The first clause empowers the appropriate Government to constitute one or more industrial tribunals having the functions allotted to it under the Act. Sub-clause (2) provides that a Tribunal shall consist of such number of members as the appropriate Government thinks fit. This clause therefore authorizes the appropriate Government to fix the number of members which will constitute the Tribunal. Sub-clause (3) and the proviso deal with the qualifications of individuals to be members with which we are not concerned. Although in this section there is no provision like sections 5(1) and 6(1) requiring a notification of the constitution of the Tribunal in the official Gazette, the deficiency is made up by rule 5 of the Industrial Disputes Rules, 1949 framed by the Government under section 38 of the Act. The rule provides that the appointment of a Board, Court or Tribunal "together with the names of the persons constituting the Board, Court or Tribunal" shall be notified in the official Gazette. It is therefore obligatory on the appropriate Government to notify the composition of the Tribunal and also the names of the persons constituting the same. In respect of a Tribunal which is entrusted with the work of adjudicating upon disputes between employers and employees which have not been settled otherwise, this provision is absolutely essential. It cannot be left in doubt to the employers or the employees as to who are the persons authorized to adjudicate upon their disputes. This is also in accordance with notifications of appointments of public servants discharging judicial or quasi-judicial functions. The important thing therefore to note is that the number forming the Tribunal and the names of the members have both to be notified in the official Gazette for the proper and valid constitution of the Tribunal.

8. It is significant that there is no provision corresponding to section 5(4) or 6(3) in section 7. Section 15 of the Act provides that when an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and as soon as practicable and at the conclusion thereof submit its award to the appropriate Government. It is thus clear and indeed it is not disputed that the tribunal as a body should sit together and the award has to be the result of the joint deliberations of all members of the Tribunal acting in a joint capacity. Section 16 requires that all members of the Tribunal shall sign the award. This again emphasizes that the function of the Tribunal is joint and it is not open to any member to refrain from signing the award. If the award is not signed by all members it will be invalid as it will not be the award of the Tribunal.

9. In the light of the provisions of section 7 the question arising for consideration is, what was the duty of the Government when the services of Mr. Chandrasekhara Aiyar ceased to be available. The two telegrams exchanged between Mr. Sen and the Government show that the Government took the view that a vacancy had occurred and they did not think of filling it up at the time. In the first place, on the true construction of the Act, was it not obligatory on the Government to notify to the contesting parties that it had decided not to fill up the vacancy ? Is it open to them to leave the parties in doubt in respect of a Tribunal entrusted with the work of adjudicating upon very important disputes between parties ? In our opinion, the whole scheme of the Act leads to the conclusion that the Government must notify its decision

as to what it desired to do, i.e., whether it intended to fill up the vacancy or not and thereupon notify what members were going to constitute the Tribunal. We are led to that conclusion because a Tribunal of three consisting of Mr. Sen, Mr. Mazumdar and Mr. Chandrasekhara Aiyar is a different tribunal from one consisting of two, viz., of Mr. Sen and Mr. Mazumdar only.

10. In this setting, it is next necessary to consider the words of section 8 on which strong reliance is placed on behalf of the respondents. The marginal note of that section is "filling of vacancies". The section deals with the Board, the Court and the Tribunal in its clauses. Under sub-section (1),the Legislature clearly contemplates that when the services of a member cease to be available at any time there will arise a vacancy. This sub-section deals with the situation in three stages. The first question is, have the services of a member (and this includes, for the present discussion, a chairman) ceased to be available ? If so, the vacancy having thus arisen, the next question is, what can be done by the appropriate Government ? If the vacancy is filled up by making the appointment, the final question is, how the proceedings shall go on before the Board, Court or Tribunal so reconstituted ? It was argued on behalf of the respondents that it was for the appropriate Government alone to pronounce whether the services of a member had ceased to be available at any time and that was not a matter for the decision of the Court. In our opinion, what is left to the option of the Government is, in case of the services of a member ceasing to be available, to appoint or not to appoint. Those stages having passed, the appropriate Government, under the section, is obliged to appoint another person to fill the vacancy, if the vacancy is created in respect of a chairman. In respect of the vacancy of a member's post, the Government is given the option to appoint or not to appoint another person. The concluding words of the sub-section "so reconstituted" clearly relate to the contingency of the Government making the appointment of another independent person in the vacancy. The concluding part of that sub-section provides for the continuance of the proceedings before the body so reconstituted. Sub-section 2 also provides that where a court or tribunal consists only of one person and his services have ceased to be available, on the appointment of another independent person the proceedings shall be continued before the person so appointed and it will not be necessary to start the proceedings from the beginning before that person. Section 8(3) provides for the contingency of the services of a member of a Board not being available. It requires the appropriate Government to make the appointment as provided in section 5(3) and further provides that notwithstanding the inclusion of a totally new man in that vacancy, the proceedings shall be continued before the Board so reconstituted. Reading the three clauses together, therefore, it is quite clear that the object of section 8 is to make specific provisions in respect of situations when the Government must or does fill up vacancies in the event of the services of a member or chairman not being available and the consequences of a totally new man filling up the vacancy. As we read the Act, that is the total object and intention of this section. It does not contemplate the consequences of the Government not making an appointment where it has the option not to do so. The emphasis on the words "so reconstituted" in sub-section (1) and (3) and the concluding words of each of those clauses clearly bear out this intention of the legislature.

11. It was argued that although no provision is made in section 8(1) about what is to happen to the Government did not fill up the vacancy, its is implied that in that event the remaining members can continue the work. We are unable to accept that argument. In the first place, as pointed out above, the object of section 8 is to provide in what cases vacancies must be filled up and how the proceedings should continue on the vacancy being filled up. It does not deal at all with the situation arising from the not filling up of the vacancy by the Government. In this connection the provisions of sections 5(4) and 6(3) have been already noted. When the legislature wanted to provide that in spite of the temporary absence or permanent vacancy the remaining members should be authorised to proceed with the work they have made express provision to that effect. If in the case of a Board or Court of Inquiry, neither of which is adjudicating any disputes, such a provision was considered necessary to enable the remaining members to act as a body, we think that the absence of such provisions in respect of the Tribunal, which adjudicates on the disputes and whose quasi-judicial work is admittedly of a joint character and responsibility leads to the irresistible conclusion that in the absence of one or more members the rest are not competent to act as a Tribunal at all. Again the provisos to sections 5(4) and 6(3) are important. Under those provisos when the Government intimates to the remaining members that the services of one "have ceased to be available" the rest have no right to act as the Board or Court. It appears under the circumstances proper to hold that in respect of a Tribunal when the services of a member have ceased to be available, the rest by themselves have no right to act as the Tribunal.

12. The question which we have got to consider can be divided in two stages. On the appointment of Mr. Chandrasekhara Aiyar as a member of the Boundary Tribunal, did his services cease to be available within the meaning of section 8, and thereby was a vacancy created ? The parties have put before us only two telegrams exchanged between the chairman and Mr. Mazumdar on the one hand and the Central Government on the other, to reach our conclusion about the situation arising from Mr. Chandrasekhara Aiyar joining the Boundary Tribunal. Certain Government notifications published in May and June 1950, i.e., over three or four months after Mr. Chandrasekhara Aiyar finished his work on the Boundary Tribunal have been put before us, but in our opinion these ex post facto notifications cannot help us in deciding the important question under section 8. It is obvious that, on the date the appointment of Mr. Chandrasekhara Aiyar as a member of the Boundary Tribunal was made, it could not have been known how long that Tribunal would take to complete its work. In any event, the evidence put before us as of that date does not show that the appointment was for a short time. The Boundary Tribunal's work may have lasted for a month or a year. Having regard to the urgency and the necessity of quick disposal of industrial disputes recognised in section 15, the deputation of a member of such a Tribunal to another Tribunal, whose work may be an indefinite duration, obviously makes the services of the member cease to be available to the Industrial Tribunal within the meaning of section 8 so as to bring about a vacancy. The later statement in the Government notification of May, 1950, that Mr. Chandrasekhara Aiyar's services were lent to the External Affairs Ministry "from the 23rd of November, 1949 to the 20th of February, 1950," appears to be more a notification for the purpose of the Accountant-General and the Audit departments of the Government than a disclosure of the mind of the Government when the appointment was made on the 23rd of November. When Mr. Sen, as chairman, and Mr. Mazumdar held their first sitting in the

absence of Mr. Chandrasekhara Aiyar, an objection was raised about the constitution of the Tribunal. Thereupon Mr. Sen, and Mr. Mazumdar conveyed to the Government what had happened at the meeting. The Government was therefore clearly faced with the problem as to what it wanted to do. The reply telegram from the Government asked Mr. Sen and Mr. Mazumdar to go on with the proceedings. It further stated that the Government might fill up the vacancy later on. The question for consideration is, what is the effect of this telegram of the Government ? In the light of the provisions of section 8 that telegram can only mean that the Government had decided not to fill up the vacancy. If a vacancy had occurred they had to make the appointment or state that they will not do so. They cannot defer their decision on the question of filling up the vacancy and in the interval direct the remaining members to go on with the reference. That seems to us to be the correct position because the fundamental basis on which the Tribunal has to do its work is that all members must sit and take part in its proceedings jointly. If a member was casually or temporarily absent owing to illness, the remaining members cannot have the power to proceed with the reference in the name of the Tribunal, having regard to the absence of any provision like section 5(4) or 6(3) in respect of the tribunal. The Government had notified the constitution of this Tribunal by the two notification summarized in the earlier part of the judgment and thereby had constituted the Tribunal to consist of three members and those three were Mr. Sen, Chairman,Mr. Mazumdar and Mr. Chandrasekhara Aiyar. Proceeding with the adjudication in the absence of one, undermines the basic principle of the joint work and responsibility of the Tribunal and of all its members to make the award. Moreover, in their telegram, the Government had not suggested that no vacancy had occurred. Indeed, they recognised the fact of a vacancy having occurred but stated that they might make the appointment later on. If those words are properly construed, without any outside considerations, it is clear that the Government intended that the remaining two members of the Tribunal should proceed with the adjudication as a Tribunal. This direction in fact was accepted and the two members proceeded with the reference and made certain awards. Those awards were sent to the Government under section 15(2) and the Government by its order declared the awards to be binding, and published them in the official Gazette. Those awards are signed only by Mr. Sen and Mr. Mazumdar. Reading those awards with the notifications and the provisions of sections 15 and 16 it is therefore clear that between 23rd November, 1949, and 20th February, 1950, the Government "intended" the tribunal to consist only of Mr. Sen and Mr. Mazumdar. It was not and cannot be seriously disputed that in the event of the Government deciding to fill up the vacancy, a notification had to be issued. The question is, why and under what rule ? The answer clearly is that they had to do it because of rule 5. The reason why intimation of a new man forming a member of the Tribunal has to be publicly given, in our opinion, applies with equal force when a tribunal initially constituted of three persons, viz, Mr. Sen, Mr. Mazumdar and Mr. Chandrasekhara Aiyar, is, by the Government decision, as from a certain date, to be a tribunal of Mr. Sen and Mr. Mazumdar only. The word "reconstituted" is properly used in section 8 because when a new member is introduced in the panel so far performing its duties it is a reconstitution, but the words of section 8 do not exclude the obligation on the Government to issue a notification under rule 5 when there is not a reconstitution, but a new constitution of the Tribunal. The Government, however, did not give effect to its intention by issuing a fresh notification under section 7. Therefore, when the services of Mr. Chandrasekhara Aiyar ceased to be available and they decided that

another independent person was not to be appointed to fill the vacancy, there arose the situation when, only two members constituted the Tribunal and for the constitution of such Tribunal no notification under section 7 of the Act was issued. To enable such a Tribunal of two persons to function, under the provisions of the Act, a notification under section 7 of the Act, in our opinion, was absolutely essential. The work of the two members in the absence of such a notification cannot be treated as the work of a Tribunal established under the Act and all their actions are without jurisdiction.

13. It was argued on behalf of the respondents that when Mr. Chandrasekhara Aiyar left for the Boundary Tribunal, there arose a temporary absence which it was not necessary to fill up and the remaining two members had jurisdiction under the Act to proceed with the adjudication. In our opinion, this contention cannot be accepted. In the first place, in the agreed statement of facts, it is not stated that there was any temporary absence. Again, as we have pointed out the Government by its telegram of the 29th of November accepted the position that a vacancy had occurred and no question of temporary absence therefore arises for our consideration. An analogy sought to be drawn between the temporary absence on leave or on deputation of Judge is misleading having regard to the fact that under section 7 the Government has to decide at the initial stage how many members and who will constitute the Tribunal and have to notify the same. That step having been taken, it is not within the power or competence of the Government to direct a few members only of such Tribunal to proceed with the adjudication for however short or long time it be. In our opinion, section 8 has no application to that situation. In this connection, it may be useful to notice that under rule 12 it was provided that "when a Tribunal consists of two or more members, the tribunal may, with the consent of the parties, act notwithstanding any casual vacancy in its number..." This rule clearly shows that even when there was a casual vacancy and the remaining members desired to proceed with the work they could do so only with the consent of the parties. This rule framed under section 38 of the Act strongly supports the contention that if the Act impliedly gave power under Section 8 to the remaining two members of the Tribunal to act, as contended on behalf of the respondents, there was no necessity at all for making this rule. Although this rule was repealed on the 3rd of December, it was in operation when the services of Mr. Chandrasekhara Aiyar ceased to be available to the Tribunal as from the 23rd of November. If in the case of temporary absence, the consent of the parties was essential to enable the remaining members to act, it certainly follows that the objection to their working as a Tribunal when there is no consent and the absence is not casual, but is due to the services of one of the members having ceased to be available, is fatal. It follows therefore that all awards made by Mr. Sen and Mr. Mazumdar, after the services of Mr. Chandrasekhara Aiyar ceased to be available, were not made by a tribunal duly constituted under section 7 and those awards are therefore void.

14. It was contended that by directing Mr. Chandrasekhara Aiyar to work again as a member of the Banks Tribunal in February, 1950, the Government had filled up the vacancy under section 8. In our opinion this position cannot be supported on the admitted facts. As regards filling up of a vacancy under section 8, we have already noticed that by directing the remaining two members to proceed with the work and by notifying their awards as the awards of the Tribunal the Government must be considered to have intended not to fill up the

vacancy. Again, the later notification published in June, 1950, does not even state that Mr. Chandrasekhara Aiyar was appointed a member of the Tribunal "in any vacancy". The word used there is "resumed", suggesting thereby that he had gone out for the time being but had started the work again. Under the circumstances and in the absence of any other evidence, we are unable to consider the fact of Mr. Chandrasekhara Aiyar sitting along with the two members from and after the 20th February, 1950, as an appointment by the Government in the vacancy created by his appointment to the Boundary Tribunal in November, 1949.

At one stage it was suggested that the members of the Tribunal could delegate their work to a few members only and the award can be supported in that way. Apart from the question what work could be so delegated, it was ascertained that the rule permitting delegation was first published on 3rd December, 1949, and as Mr. Chandrasekhara Aiyar had gone to his work on the Boundary Tribunal on 23rd November, no delegation in that manner was possible. Moreover, the statement of facts nor the award of the three persons suggests that there was any delegation of work by the Tribunal in the matter of the general issues to some members only. Nor was any report made to or considered by the full Tribunal as required by the rule.

The next question to be considered is the effect of Mr. Chandrasekhara Aiyar sitting with the two members of the Tribunal after 20th February, 1950. The record shows, that the two members considered most of the general issues raised in respect of the banks at many meetings. The nature and volume of the work done by them during this interval has been summarized in the earlier part of the judgment. It is not contended that on Mr. Chandrasekhara Aiyar commencing to sit again with the other two members on and from the 20th February what had happened on his absence war re-done on reheard. Mr. Chandrasekhara Aiyar along with the other two members continued to work from the point work had proceeded upto 19th February, 1950, and the award which is put before us is signed by all the three of them, i.e., on the footing that all the three of them were members of the Tribunal. It was suggested that Mr. Chandrasekhara Aiyar should be treated as having remained throughout a member of the Tribunal of three and that he resumed work after a temporary absence between November, 1949, and February, 1950. In our opinion this position is quite unsupportable. When the services of Mr. Chandrasekhara Aiyar ceased to be available to the Tribunal in November, 1949, and the Government accepted the position that a vacancy had occurred, Mr. Chandrasekhara Aiyar ceased to be a member of the Tribunal of three as constituted under the Government notification of June, 1949. Thereafter Mr. Chandrasekhara Aiyar never became a member of the tribunal as he was never appointed a member before he signed the award. No notification making such an appointment under section 7 read with section 8 of the Act has been even suggested to exist. In the circumstances, the position in law was that Mr. Chandrasekhara Aiyar ceased to be a member of the Tribunal of three as originally constituted, that no new Tribunal of two was legally constituted and that, having ceased to be a member of the tribunal of three, Mr. Chandrasekhara Aiyar could not resume duties as a member of the Tribunal of three without a fresh constitution of a Tribunal of three. The result is that all the interim awards purported to be made by Mr. Sen and Mr. Mazumdar as well as the final awards made by the three must all be held to have been made without jurisdiction. It seems to us that the only way in which the Government could have put matters right was by a notification issued in February, 1950, constituting the tribunal as a fresh Tribunal of three members (and not by proceeding as if a vacancy had been filled up on 20th February, 1950, under section 8) and three

members proceeding with the adjudication de novo. Even if the contention of the respondents that Mr. Chandrasekhara Aiyar continued throughout a member of the tribunal were accepted, in our opinion, the appellants' objection to the jurisdiction of the three persons to sign the award must be upheld. Section 16 which authorizes them to sign is preceded by section 15. Unless they have complied with the provisions of section 15, i.e., unless all the three have heard the matter together, they have no jurisdiction to make the award in terms of section 15 and have therefore also no jurisdiction to sign the award under section 16. In any view of the matter the awards are therefore without jurisdiction.

15. It was suggested that his signature on the award could be treated as surplus. In our opinion, this argument requires only to be stated to be rejected. It is not and cannot be disputed that Mr. Chandrasekhara Aiyar took active part in the deliberations and in the proceedings after 20th February, 1950, and naturally discussed and influenced the decision of the other two members of the Tribunal by such discussions. This is not a case where an outsider was consulted by the members of a Tribunal and thereafter the members came to their own independent decision. It is obvious that for making the award all the three persons worked together and were jointly responsible for the resultant award. The argument of surplusage therefore must fail. In this view of the matter, the final award put before the Court is clearly without jurisdiction and the appellants' contention must be upheld.

16. The final contention that the sittings in the interval constituted only an irregularity in the proceedings cannot again be accepted because, in the first place, an objection was raised about the sittings of the two members as the Tribunal. That objection, whether it was raised by the appellants or the other party, is immaterial. The objection having been overruled no question of acquiescence or estoppel arises. Nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. No acquiescence or consent can give a jurisdiction to a court of limited jurisdiction which it does not possess. In our opinion the position here clearly is that the responsibility to work and decide being the joint responsibility of all the three members, if proceedings are conducted and discussions on several general issues took place in the presence of only two, followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The distinction clearly is between the jurisdiction to decide matters and the ambit of the matters to be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the questions is of the jurisdiction of the Tribunal to make the award under the circumstances summarized above, no question of acquiescence or consent can affect the decision.

17. It was contended that under section 8 the contingency of the Government not filling up a vacancy is clearly visualized. It is also provided in the section that in the event of vacancy the Government may fill it up by appointing a new man and in such a case the proceedings need not start afresh. It was argued that nothing more had happened in the present case and therefore no question of invalidity of the awards arises. We are unable to accept these

contentions. In the first place, when Government decides not to fill up a vacancy its decision has to be notified. It is not a matter of the Government's internal administration where the officers can work under departmental orders. Moreover it should be noticed that when the services of a member cease to be available and that fact is conveyed to the rest of the members under sections 5(4) and 6(3), the rest have no right to act as a Body at all. The wording of section 7 or 8, in our opinion, does not permit the remaining members of a Tribunal to have a higher right in the absence of a proper new notification issued under section 7 of the Act. As regards the second contention, it should be noticed that th