The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another

Vs

The Hind Cycles Ltd., Bombay

Civil Appeals Nos. 182 and 183 of 1962

(CJI B. P. Sinha, P. B. Gajendragadkar, J. C. Shah, K. N. Wanchoo, K. C. Das Gupta JJ)

18.10.1962

JUDGMENT

GAJENDRAGADKAR, J. -

These three appeals have been placed for hearing together because the respective respondents in the in the said appeals have raised the same preliminary objection against their competence. Civil Appeals Nos. 182 and 183/1962 have been filed against the award pronounced by Mr. D. V. Vyas on April 8, 1960, in a dispute between the appellants, the Engineering Mazdoor Sabha & another, and the respondent The Hind Cycles Limited, Bombay. This dispute was voluntarily referred to Mr. Vyas under s. 10A of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called the Act), by the parties by their agreement of December 3, 1959. The Arbitrator entered upon the reference on December 14, 1959, and pronounced his award on April 8, 1960. By their appeals, the appellants have challenged the validity and the propriety of the said award on several grounds and the appeals have been brought to this Court by special leave. The respondent contends that the arbitrator whose award is challenged was not a Tribunal under Art. 136 of the Constitution and so, an appeal by special leave is not competent.

Civil Appeal No. 204/1962 has been filed by the appellant, the Anglo-American Direct Tea Trading Co. Ltd., against the respondents, its workmen, and by its appeal, the appellant seeks to challenge the validity and the correctness of the award pronounced by Dr. T. V. Sivanandam to whom the dispute between the parties was voluntarily referred under s. 10A of the Act. The award was pronounced on August 27, 1961, and by special leave the appellant has come to this Court. The respondents urge that the appeal is incompetent because the arbitrator is not a Tribunal under Art. 136 of the Constitution. That is how the question which arises for our decision on these preliminary objections is whether an arbitrator to whom parties have voluntarily referred their disputes for arbitration is a Tribunal under Art. 136.

Article 136(1) provides that notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. Sub-article (2) excludes from the scope of sub-Art. (1) any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under made by any law relating to the Armed Forces. It is clear that Art. 136(1) confers very wide powers on this Court and as such, its provisions have to be liberally construed. The constitution-makers thought it necessary to clothe this Court with very wide powers to deal with all orders and adjudications made by Courts and Tribunals in the territory of India in order to ensure fair administration of justice in this country. It is significant that

whereas Arts. 133(1) and 134(1) provide for appeals to this Court against judgments, decrees or final orders passed by the High Courts, no such limitation is prescribed by Art. 136(1). All Court and all Tribunals in the territory of India except those in cl. (2) are subject to the appellate jurisdiction of this Court under Art. 136(1). It is also clear that whereas the appellate jurisdiction of this Court under Arts. 133(1) and 134(1) can be invoked only against final orders, no such limitation is imposed by Art. 136(1). In other words, the appelate jurisdiction of this Court under this latter provision can be exercised even against an interlocutory order or decision. Causes or matters covered by Art. 136(1) are all causes and matters that are brought for adjudication before Courts or Tribunals. The sweep of this provision is thus very wide. It is true that in exercising its powers under this Article, this Court in its discretion refuses to entertain applications for special leave where it appears to the Court that interference with the orders sought to be appealed against may not be necessary in the interest of justice. But the limitations thus introduced, in practice, are the limitations imposed by the Court itself in its discretion. They are not prescribed by Art. 136(1).

For invoking Art. 136(1), two conditions must be satisfied. The proposed appeal must be from any judgment, decree, determination, sentence or order, that is to say, it must not be against a purely executive or administrative order. If the determination or order giving rise to the appeal is a judicial or quasi-judicial determination or order, the first condition is satisfied. The second condition imposed by the Article is that the said determination or order must have been made or passed by any Court or Tribunal in the territory of India. These conditions, therefore, require that the act complained against must have the character of a judicial or quasi-judicial act and the authority whose act is complained against must be a Court or a Tribunal. Unless both the conditions are satisfied, Art. 136(1) cannot be invoked.

The distinction between purely administrative or executive acts and judicial or quasi-judicial acts has been considered by this Court on several occasions. In the case of Province of Bombay v. Kusaldas s. Advani, [[1950 S.C.R. 621.] Mahajan, J., observed that the question whether an act is a judicial or a quasi-judicial one or a purely executive act depends on the terms of the particular rule and the nature, scope and effect of the particular power in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each case. Courts of law established by the State decide cases brought before them judicially and the decisions thus recorded by them fall obviously under the category of judicial decisions. Administrative or executive bodies, on the other hand, are often called upon to reach decisions in several matters in a purely administrative or executive manner and these decisions fall clearly under the category of administrative or executive orders. Even Judges have, in certain matters, to act administratively, while administrative or executive authorities may have to act quasi-judicially in dealing with some matters entrusted to their jurisdiction. Where an authority is required to act judicially either by an express provision of the statute under which it acts or by necessary implication of the said statute, the decisions of such an authority generally amount to quasi-judicial decisions. Where, however, the executive or administrative bodies are not required to act judicially and are competent to deal with issues referred to them administratively, their conclusions cannot be treated as quasi-judicial conclusions. No doubt, even while acting administratively, the authorities must act bonafide; but that is different from saying that they must act judicially. Bearing in mind this broad distinction between acts or orders which are judicial or quasi-judicial on the one hand, and administrative or executive acts on the other, there is no difficulty in holding that the decisions of the arbitrators to whom industrial disputes are voluntarily referred under s. 10A of the Act are quasi-judicial decisions and they amount to a determination or order under Art. 136(1). This position is not seriously disputed before us. What is in dispute between the parties is not the character of the decisions against which the appeals have been filed, but it is the character of the authority which decided the disputes. The

respondents contend that the arbitrators whose awards are challenged, are not Tribunals, whereas the appellants contend that they are.

Article 136(1) refers to a Tribunal in contradistinction to a Court. The expression "a Court" in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of courts which are invested with the State's inherent judicial powers. The Tribunal as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a court in the technical sense. The Tribunal, according to the dictionary meaning, is a seat of justice; and in the discharge of its functions, it shares some of the characteristics of the court. A domestic Tribunal appointed in departmental proceedings, for instance, or instituted by an industrial employer cannot claim to be a Tribunal under Art. 136(1). Purely administrative Tribunals are also outside the scope of the said Article. The Tribunals which are contemplated by Art. 136(1) are clothed with some of the powers of the courts. They can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations. The procedural rules which regulate the proceedings before the Tribunals and the powers conferred on them in dealing with matters brought before them, are sometimes described as the trappings of a court' and in determining the question as to whether a particular body or authority is a Tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a court.

In Shell Company of Australia, Ltd. v. Federal Commissioner of Taxation [[1931] A.C. 275.], the Privy Council had to consider whether the Board of Review created by s. 41 of the (Federal) Income Tax Assessment Act, 1922-25, to review the decisions of the Commissioner of Taxation, was a court exercising the judicial power of the Commonwealth within the meaning of s. 71 of the Constitution of Australia; and it was held that it was not a court but was an administrative tribunal. Lord Sankey, L.C., examined the relevant provisions of the statute which created the said Board and came to the conclusion that the Board appeared to be in the nature of administrative machinery to which the taxpayer can resort at his option in order to have his contentions reconsidered. He then added that an administrative tribunal may Act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a court of judicial power (pp, 297-298). It is in this connection that Lord Sankey observed that the authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power. In that connection, His Lordship enumerated some negative propositions. He observed that a Tribunal does not become a Court because it gives a final decision, or because it hears witnesses on oath, or because two or more contending parties appear before it between whom it has to decide, or because it gives decisions which affect the rights of subjects, or because there is an appeal to a Court, or because it is a body to which a matter is referred by another body (pp. 296-297). These negative propositions indicate that the features to which they refer may constitute the trappings of a Court; but the presence of the said trappings does not necessarily make the Tribunal a Court. It is in this context that the picturesque phrase 'the trappings of a Court' came to be used by the Privy Council.

This question was considered by this Court in The Bharat Bank Ltd., Delhi v. Employees of the

Bharat Bank Ltd., Delhi. [[1950] S.C.R. 459.] This decision is apposite for our purpose because the question which came to be determined was in regard to the character of the Industrial Tribunals constituted under the Act. The majority decision of this Court was that the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions and so, though the Tribunal is not a Court, it is nevertheless a Tribunal for the purposes of Art. 136. In other words, the majority decision which, in a sense, was epoch making, held that the appellant jurisdiction of this Court under Art. 136 can be invoked in proper cases against awards and other orders made by Industrial Tribunals under the Act. In discussing the question as to character of the Industrial Tribunal functioning under the Act, Mahajan, J., observed that the condition precedent for bringing a tribunal within the ambit of Art. 136, is that it should be constituted by the State; and he added that a Tribunal would be outside the ambit of Art. 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. In the opinion of the learned Judge, Tribunals which are found invested with certain functions of a Court of Justice and have some of its trappings also would fall within the ambit of Art. 136 and would be subject to the appellate control of this Court whenever it is found necessary to exercise that control in the interests of justice. It would thus be noticed that apart from the importance of the trappings of a Court, the basic and essential condition which makes an authority or a body a tribunal under Art. 136, is that it should be constituted by the State and should be invested with the State's inherent judicial power. Since this test was satisfied by the Industrial Tribunals under the Act, according to the majority decision, it was held that the awards made by the Industrial Tribunals are subject to the appellate jurisdiction of this Court under Art. 136.

In Durga Shankar Mehta v. Thakur Raghuraj Singh [[1955] 1 S.C.R. 267.], Mukherjea, J., who delivered the unanimous opinion of the Court observed that it was well settled by the majority decision of this Court in the case of Bharat Bank Ltd. [[1950] S.C.R. 459.] that the expression "Tribunal" as used in Art. 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. Thus, there can be no doubt that the test which has to be applied in determining the character of an adjudicating body is whether the said body has been invested by the State with its inherent judicial power. This test implies that the adjudicating body should be constituted by the State and should be invested with the State's judicial power which it is authorised to exercise. The same principle has been reiterated in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [[1962] 2 S.C.R. 339.].

It is now necessary to examine the scheme of the relevant provisions of the Act bearing on the voluntary reference to the arbitrator, the powers of the said arbitrator and the procedure which he is required to follow. Section 10A under which voluntary reference has been made in both the cases was added to the Act by Act 36 of 1956. It reads as under :-

> "10A.(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.
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> (2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within fourteen days from the date of the receipt of such copy, publish the same in the official Gazette.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(5) Nothing in the arbitration Act, 1940 shall apply to arbitrations under this section."

Consequent upon the addition of this section, several changes were made in the other provisions of the Act. Section 2(b) which defines an award was amended by the addition of the words "it includes an arbitration award made under section 10A". In other words, as a result of the amendment of the definition of the word "award", an arbitration award has now become an award for the purposes of the Act. The inclusion of the arbitration award within the meaning of s. 2(b) has led to the application of sections 17, 17A, 18(2), 19(3), 21, 29, 30, 33C and 36A to the arbitration award. Under s. 17(2), an arbitration award when published under s. 17(1), shall be final and shall not be called in question by any Court in any manner whatsoever. Section 17A provides that the arbitration agreement shall become enforceable on the expiry of thirty days from the date of its publication under s. 17, and under s. 18(2), it is binding on the parties to the agreement who referred the dispute to arbitration; under s. 19(3), it shall, subject to the provisions of s. 19, remain in operation for a period of one year provided that the appropriate Government may reduce the said period and fix such other period as it thinks fit; provided further that the said period may also be extended as prescribed under the said proviso. The other sub-sections of s. 19 would also apply to the arbitration award. Section 21 which requires certain matters to be kept confidential is applicable and so section 30 which provides for a penalty for the contravention of s. 21, also applies. Section 29 which provides for penalty for breach of an award can be invoked in respect of an arbitration award. Section 33C which provides for a speedy remedy for the recovery of money from an employer is applicable; and s. 36A can also be invoked for the interpretation of any provision of the arbitration award. In other words, since an arbitration award has been included in the definition of the word 'Award', these consequential changes have made the respective provisions of the Act applicable to an arbitration award.

On the other hand, there are certain provisions which do not apply to an arbitration award. Sections 23 & 24 which prohibit strikes and lock-outs, are inapplicable to the proceedings before the arbitrator to whom a reference is made under s. 10A, and that shows that the Act has treated the arbitration award and the prior proceedings in relation to it as standing on a different basis from an award and the prior proceedings before the Industrial Tribunals or Labour Courts. Section 20, which deals with the commencement and conclusion of proceedings, provides, inter alia, by sub-s. (3) that proceedings before an arbitrator under s. 10A shall be deemed to have commenced on the date of the reference of the dispute for arbitration and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under s. 17A. It would be noticed that just as in the case of proceedings before the Industrial Tribunal commencement of the proceedings is marked by the reference under s. 10, so the commencement of the proceedings before the arbitrator is marked by the reference made by the parties themselves, and that means the commencement of the proceedings takes place even before the appropriate Government has entered on the scene and has taken any action in pursuance of the provisions of s. 10A.

Rules have been framed by the Central Government and some of the State Governments under s. 38(2)(aa), and these rules make provisions for the form of arbitration agreement, the place and time of hearing, the power of the arbitrator to take evidence, the manner in which the summons should be served, the powers of the arbitrator to proceed ex parte, if necessary, and the power to correct mistakes in the award and such other matters. Some of these Rules (as for instance, Central Rules 7, 8, 13, 15, 16 & 18 to 28) seem to make a distinction between an arbitrator and the other authorities under the Act, whereas the Rules framed by some of the States (for instance the rules framed by the Madras State 31, 37, 38, 39, 40, 41 & 42) seem to treat the arbitrator on the same basis as the other appropriate authorities under the Act. That, shortly stated, is the position of the relevant provisions of the statute and the Rules framed thereunder. It is in the light of these provisions that we must now consider the character of the arbitrator who enters upon arbitration proceedings as a result of the reference made to him under s. 10A.

The learned Solicitor-General contends that such an arbitrator is no more and no better than a private arbitrator, to whom a reference can be made by the parties under an arbitration agreement as defined by the Arbitration Act, 1940 (No. X of 1940). He argues that such an arbitrator has to act judicially, has to follow a fair procedure, take evidence, hear the parties and come to his conclusion in the light of the evidence adduced before him; and that is all that the arbitrator to whom reference is made under s. 10A does. It may be that the arbitration award is treated as an award for certain purposes under the Act; but the position, in law, still remains that it is an award made by an arbitrator appointed by the parties. Just as an award made by a private arbitrator becomes a decree subject to the provisions of ss. 15, 16, 17 and 30 of the Arbitration Act, and thus binds the parties, so does an award of the arbitrator under s. 10A become binding on the parties by virtue of the relevant provisions of the Act. Against an award made by a private arbitrator, no writ can issue under Art. 226; much less can an appeal lie under Art. 136. The position with regard to the award made by an arbitrator under s. 10A is no different. In support of this argument, he has relied on the decision in R. V. Disputes Committee of the National Joint Council for the Craft of Dental Technicians [[1953] 1 All. E.R. 327.]. On a motion for an order of certiorari to quash an order made by the Disputes Committee, Lord Goddard, C.J., held that the Court has no power to direct the issue of orders of certiorari or of prohibition addressed to an arbitrator directing that a decision by him should be quashed or that he be prohibited from proceeding in an arbitration, unless he is acting under powers conferred by statute. "There is no instance of which I know in the books", observed Lord Goddard, "where certiorari or prohibition has gone to any arbitrator, except a statutory arbitrator, and a statutory arbitrator is a person to whom, by statute, the parties must resort." The Solicitor-General suggests that though some powers have been conferred on the arbitrator appointed under s. 10A, he cannot be treated as a statutory arbitrator, because the parties are not compelled to go to any person named as such by the statute. The arbitrator is an arbitrator of the parties' choice and so, he cannot be treated as a statutory arbitrator.

On the other hand, Mr. Pai has urged that it would be unreasonable to treat the present arbitrator as a private arbitrator, because s. 10A gives statutory recognition to the appointment of the arbitrator and the consequential changes made in the Act and the statutory rules framed thereunder clearly show that he has been clothed with quasi-judicial powers and his proceedings are regulated by rules of procedure. Therefore, it would be appropriate to treat him as a statutory arbitrator and as such, a writ of certiorari would lie against his decision under Art. 226. In support of this argument, Mr. Pai has referred us to the decision of the Court of Appeal in The King v. Electricity Commissioners Ex-parte London Electricity Joint Committee Co. (1920) Ltd. [[1924] 1 K.B.D. 171.] In that case, the scheme framed by the Electricity Commissioners established by s. 1 of the Electricity (Supply) Act. 1919, was challenged and it was held that the impugned scheme was ultra vires, and so, a writ of

prohibition was issued prohibiting the Commissioners from proceeding with the further consideration of the scheme. Dealing with the question as to whether a writ can issue against a body like the Electricity Commissioners constituted under the Act, Lord Atkin referred to the genesis and the history of the writs of prohibition and certiorari and held that the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs (p. 205). Then Lord Atkin referred to a large number of previous decisions in which writs had been issued against different authorities statutorily entrusted with the discharge of different duties. To the same effect is the decision in the case of R. V. Northumberland Compensation Appeal Tribunal Ex-parte Shaw, [[1951] 1 All. E.R. 268.] Vide also Halsbury's Laws of England 3rd Edn., Vol. 2, p. 62, and Vol. 11, p. 122.

The argument, therefore, is that against an award pronounced by an arbitrator appointed under s. 10A, a writ of certiorari would lie under Art. 226, and so, the arbitrator should be deemed to be a Tribunal even for the purposes of Art. 136. In our opinion, this argument is not well-founded. Art. 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Art. 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of Courts or Tribunals. Under Art. 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore even if the arbitrator appointed under section 10A is not a Tribunal under Art. 136 in a proper case, a writ may lie against his award under Art. 226. That is why the argument that a writ may lie against an award made by such an arbitrator does not materially assist the appellants' case that the arbitrator in question is a tribunal under Art. 136.

It may be conceded that having regard to several provisions contained in the Act and the rules framed thereunder, an arbitrator appointed under s. 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator under s. 10A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator, as in a loose sense, a statutory arbitrator and to that extent, the argument of the learned Solicitor-General may be rejected. But the fact that the arbitrator under s. 10A is not exactly in the same position as a private arbitrator does not mean that he is a tribunal under Art. 136. Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. As we will presently point out, he is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source. The fact that his appointment once made by the parties is recognised by s. 10A and after his appointment he is clothed with certain powers and has thus, no doubt, some of the trappings of a court, does not mean that the power of adjudication which he is exercising is derived from the State and so, the main test which this Court has evolved in determining the question about the character of an adjudicating body is not satisfied. He is not a Tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position, thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal. A statutory Tribunal is appointed under the relevant provisions of a statute which also

compulsorily refers to its adjudication certain classified classes of disputes. That is the essential feature of what is properly called statutory adjudication or arbitration. That is why we think the argument strenuously urged before us by Mr. Pai that a writ of certiorari can lie against his award is of no assistance to the appellants when they contend that such an arbitrator is a Tribunal under Art. 136.

Realising this difficulty, Mr. Sule concentrated on the construction of s. 10A itself and urged that on a fair and reasonable construction of s. 10A, it should be held that the arbitrator cannot be distinguished from an Industrial Tribunal and is therefore, a Tribunal under Art. 136. In the Bharat Bank Ltd. [[1950] S.C.R. 459.] case it has been held that an Industrial Tribunal is a tribunal under Art. 136 and the arbitrator is no more and no less than an Industrial Tribunal; and so, the present appeals are competent, says Mr. Sule.

That takes us to the construction of s. 10A. Section 10A enables the employer and the workmen to refer their dispute to arbitration by a written agreement before such a dispute has been referred to the Labour Court of Tribunal or National Tribunal under s. 10. If an industrial dispute exists or is apprehended, the appropriate Government may refer it for adjudication under s. 10; but before such a reference is made, it is open to the parties to agree to refer their dispute to the arbitration of a person of their choice and if they decide to adopt that course, they have to reduce their agreement to writing. When the parties reduce their agreement to writing, the reference shall be to such person as may be specified in the arbitration agreement. The section is not very happily worded; but the essential features of its scheme are not in doubt. If a reference has not been made under s. 10, the parties can agree to refer their dispute to the arbitrator of their choice, the agreement is followed by writing, the writing specifies the arbitrator or arbitrators to whom the reference is to be made and the reference shall be made accordingly to such arbitrator or arbitrators. Mr. Sule contends - and it is no doubt an ingenious argument - that the last clause of s. 10A means that after the written agreement is entered into by the parties, the reference shall be made to the person named by the agreement but it shall be made by the appropriate Government. In other words, the argument is that if the parties enter into a written agreement as to the person who should adjudicate upon their disputes, it is the Government that steps in and makes the reference to such named person. The arbitrator or arbitrators are initially named by the parties by consent; but it is when a reference is made to him or them by the appropriate Government that the arbitrator or arbitrators is or are clothed with the authority to adjudicate, and so, it is urged that the act of reference which is the act of the appropriate Government makes the arbitrator an Industrial Tribunal and he is thereby invested with the State's inherent judicial power.

We do not think that the section is capable of this construction. The last clause which says that the reference shall be to such person or persons, grammatically must mean that after the written agreement is entered into specifying the person or persons, the reference shall be to such person or persons. We do not think that on the words as they stand, it is possible to introduce the Government at any stage of the operation of s. 10A(1). The said provision deals with what the parties can do and provides that if the parties agree and reduce their agreement to writing, a reference shall be to the person or persons named by such writing. The fact that the parties can agree to refer their dispute to the Labour Court, Tribunal or National Tribunal makes no difference to the construction of the provision. Sub-section (2) prescribes the form of agreement and this form also supports the same construction. This form requires that the parties should state that they have agreed to refer the subsisting industrial dispute to the arbitration of the persons to be named in the form. Then it is required that the matters in dispute should be specified and several other details indicated. The form ends with the statement that the parties agree that the majority decision of the arbitrators shall be

binding on them. This form is to be signed by the respective parties and to be attested by two witnesses. In other words, there is no doubt that the form prescribed by s. 10A(2) is exactly similar to the arbitration agreement; it refers to the dispute, it names the arbitrator and it binds the parties to abide by the majority decision of the arbitrators. Thus, it is clear that what s. 10A contemplates is carried out by prescribing an appropriate form under s. 10A(2).

After the prescribed form is thus duly signed by the parties and attested, under sub-s. (3) a copy of it has to be forwarded to the appropriate Government and the conciliation officer and the appropriate Government has, within fourteen days from the date of the receipt of such copy, to publish the same in the official Gazette. The publication of the copy is in a sense, a ministerial act and the appropriate Government has no discretion in the matter. Sub-section (4) provides that the arbitrator shall investigate the dispute and submit his award to the appropriate Government; and sub-s. (5) excludes the application of the Arbitration Act to the arbitrations provided for by s. 10A. It is thus clear that when s. 10A(4) provides that the arbitrator shall investigate the dispute; it merely asks the arbitrator to exercise the powers which have been conferred on him by agreement of the parties under s. 10A(1). There is no doubt that the appropriate Government plays some part in these arbitration proceedings - it publishes the agreement; it requires the arbitration award to be submitted to it; then it publishes the award; and in that sense, some of the features which characterise the proceedings before the Industrial Tribunal before an award is pronounced and which characterise the subsequent steps to be taken in respect of such an award, are common to the proceedings before the arbitrator and the award that he may make. But the similarity of these features cannot disguise the fact that the initial and the inherent power to adjudicate upon the dispute is derived by the arbitrator from the parties, agreement, whereas it is derived by the Industrial Tribunal from the statutory provisions themselves. In this connection, the provisions of s. 10(2) may be taken into consideration. This clause deals with a case where the parties to an industrial dispute apply in the prescribed manner for a reference of their dispute to an appropriate authority, and it provides that the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly. In other words, if the parties agree that a dispute pending between them should be referred for adjudication, they move the appropriate Government, and the appropriate Government is bound to make the reference accordingly. Unlike cases falling under s. 10(1) where in the absence of an agreement between the parties it is in the discretion of the appropriate Government to refer or not to refer any industrial dispute for adjudication, under s. 10(2) if there is an agreement between the parties, the appropriate Government has to refer the dispute for adjudication. But the significant fact is that the reference has to be made by the appropriate Government and not by the parties, whereas under s. 10A the reference is by the parties to the arbitrator named by them and it is after the parties have named the arbitrator and entered into a written agreement in that behalf that the appropriate Government steps in to assist the further proceedings before the named arbitrator.

Section 18(2) is also helpful in this matter. It provides that an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration. It would be noticed that this provision mentions the parties to the agreement as the parties who have referred the dispute to arbitration and that indicates that the act of reference is not the act of the appropriate Government, but the act of the parties themselves.

Section 10A(5) may also be considered in this connection. If the reference to arbitration under s. 10A(1) had been made by the appropriate Government, then the Legislature could have easily used appropriate language in that behalf assimilating the arbitrator to the position of an Industrial Tribunal and in that case, it would not have been necessary to provide that the Arbitration Act will

not apply to arbitrations under this section. The provisions of s. 10A(5) suggest that the proceedings contemplated by s. 10A are arbitration proceedings to which, but for sub-s. (5), the Arbitration Act would have applied.

On behalf of the appellants, reliance has been placed on a recent decision of the Bombay High Court in the case of the Air Corporations Employees Union v. D. V. Vyas [(1961) 64 Bom. L.R. 1.]. In that case, the Bombay High Court has held that an arbitrator functioning under s. 10A is subject to the judicial superintendence of the High Court under Art. 227 of the Constitution and, therefore, the High Court can entertain an application for a writ of certiorari in respect of the orders passed by the arbitrator. It was no doubt urged before the High Court that the arbitrator in question was not amenable to the jurisdiction of the High Court under Art. 227 because he was a private and not a statutory arbitrator; but the Court rejected the said contention and held that the proceedings before the arbitrator appointed under s. 10A had all the essential attributes of a statutory arbitration under s. 10 of the Act. From the judgment, it does not appear that the question about the construction of s. 10A was argued before the High Court or its attention was drawn to the obvious differences between the provisions of s. 10A and s. 10. Besides, the attention of the High Court was apparently not drawn to the tests laid down by this Court in dealing with the question as to when an adjudicating body or authority can be deemed to be a Tribunal under Art. 136. Like Art. 136, Art. 227 also refers to courts and Tribunals and what we have said about the character of the arbitrator appointed under s. 10A by reference to the requirements of Art. 136, may prima facie apply to the requirements of Art. 227. That, however, is a matter with which we are not directly concerned in the present appeals.

Mr. Sule made a strong plea before us that if the arbitrator appointed under s. 10A was not treated as a Tribunal, it would lead to unreasonable consequences. He emphasised that the policy of the legislature in enacting section 10A was to encourage industrial employers and employees to avoid bitterness by referring their disputes voluntarily to the arbitrators of their own choice, but this laudable object would be defeated if it is realised by the parties that once reference is made under s. 10A the proceedings before the arbitrator are not subject to the scrutiny of this Court under Art. 136. It is extremely anomalous, says Mr. Sule, that parties aggrieved by an award made by such an arbitrator should be denied the protection of the relevant provisions of the Arbitration Act as well as the protection of the appellate jurisdiction of this Court under Art. 136. There is some force in this connection, It appears that in enacting section 10A the Legislature probably did not realise that the position of an arbitrator contemplated therein would become anomalous in view of the fact that he was not assimilated to the status of an Industrial Tribunal and was taken out of the provisions of the Indian Arbitration Act. That, however, is a matter for the Legislature to consider.

In the result, the preliminary objection raised by the respondents in the appeals before us must be upheld and the appeals dismissed on the ground that they are incompetent under Article 136. The appellants to pay the costs of the respondents in C.A. No. 204 of 1962. No order as to costs in C.A. Nos. 182 & 183 of 1962.

Appeals dismissed.

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