BOMBAY HIGH COURT

Air Corporations Employees

Vs.

D.V. Vyas

Special Civil Appln. No.70 of 1961

(Patel and Chandrachud, JJ.)

25.08.1961

JUDGMENT

Chandrachud, J.

1. This petition is a sequel to the dispute between the Air India International Corporation and its employees.

2. Pursuant to a scheme of nationalization of air transport, the Indian Parliament passed an Act called 'The Air Corporations Act (Act No.XXVII of 1953)'. Under the said Act, two Corporations called the "Air India International Corporation" and the "Indian Airlines Corporation" were set up. The Air India International Corporation took over the assets of the 'Air India International Ltd.', a company which used to operate on the international route, while the Indian Airlines Corporation took over the assets of all other air Companies which used to operate on the inland routes.

3. First in October, 1954 and then in September 1956, the Air Corporations' Employees' Union (hereinafter referred to as the Union), submitted a list of demands to the Management of the Air India International Corporation (hereinafter referred to as the Corporation). The dispute was referred to the Conciliation Officer of the State Government who reported failure of the conciliation proceedings in January 1958. After the failure of the conciliation proceedings, the Union approached the Management for direct negotiations, whereupon a Committee was appointed to examine the demands of the Union. The efforts to arrive at an agreed formula failed again. Thereafter on the 11th of August, 1958, the Union submitted to the Management a revised charter of 57 demands. A negotiating Committee consisting of two representatives of the Corporation (Mr. R. Doraiswamy, I.A.S., Chief Administrative Officer and Mr. A.S. Banavalikar, Personnel Manager of the Corporation) and two representatives of the Union (Mr. N.C. Mukherjee, General Secretary of the Union and Mr. V. Crasto, Regional Secretary of the Union)

was appointed to explore a further possibility of an amicable settlement of the disputes. The efforts of the Negotiating Committee bore some fruit for by an agreement dated the 1st of April, 1959, the Management and the Union settled the dispute on 20 demands, and the Union further agreed to withdraw 3 of the demands. As regards the remaining demands, a separate agreement of even date was executed under section 10-A of the Industrial Disputes Act (Act No.XIV of 1947), and by that agreement the parties agreed to refer the disputes specified in Annexure-'A' thereof to the arbitration of a Committee of arbitration. As one of the principal points canvassed before us relates to the true construction and effect of this agreement, it would be useful to set out the relevant terms of this agreement. The agreement, in so far as is material, runs thus:-

"AGREEMENT

Under section 10-A of the Industrial Disputes Act, 1947

BETWEEN

(Names of the parties)

... ...

* * * * *

... ...

* * * * *

1. ... ... it is hereby agreed between the parties to refer the following industrial disputes to the Arbitration of a Committee of Arbitration, consisting of two representatives of the Management of Air India International Corporation and two representatives of the Air Corporations Employees' Union, with an independent Chairman of the status of a Judge of the High Court to be nominated by Government.

2. ... ...

(i) * * * * *

(ii) * * * *

(iii) * * *

(iv) * *

(iv) *

3. We further agree that the unanimous decision of the arbitrators shall be binding on us. In the event of there being no unanimity amongst the Arbitrators, the decision to be made by the independent Chairman Dominated by Government will be deemed to be an Award made by a single and sole Arbitrator." A copy of this agreement was forwarded to the Government of Bombay, which published the same in the Official Gazette as required by sub-section (3) of section 10-A of the Industrial Disputes Act. By its letter dated the 27th June, 1959, in the Labour and Social Welfare Department, the Government of Bombay nominated Mr. D.V. Vyas, I.C.S., a retired Judge of the High Court of Bombay, to be the independent Chairman of the Committee of arbitration. The Corporation appointed Mr. R. Doraiswamy, Chief Administrative Officer and Mr. N.D. O'Neal, Deputy Engineering Manager, as its representatives on the Committee of Arbitration. The Union appointed Mr. V. Lobo and Mr. V.P. Menon as its representatives on the said Committee.

4. After filing their respective statements, the Corporation and the Union gave to each other inspection of the documents on which they proposed to rely. The actual hearing on the demands commenced on the 23rd November, 1959. The Committee held 61 meetings in all, and by the 29th April, 1960, all the demands, except a few on which the hearing was deferred, were fully heard.

5. In the next meeting of the Committee which was held on the 5th May, 1960, the Chairman discovered that the representatives of the Corporation and the Union had started negotiations with a view to arrive at a settlement of the whole dispute. On the 9th of May, 1960, the four representatives arrived at a 'unanimous agreement' in respect of all the demands except demand No.20 relating to the retirement benefits in the shape of provident fund and gratuity. The decision on demand No.20 was left to the adjudication of the Chairman as a sole arbitrator. By a letter of even date, the four representatives forwarded a copy of the agreement to the Chairman. That letter reads thus:-

> "Consent Award.
> We, the undersigned representatives of the Management and the Air Corporations Employees' Union on the Arbitration Committee, have the honour to inform you that we have reached an unanimous agreement in respect of the demands in Arbitration excepting Demand No.20 relating to retirement benefits:-
> (A) Provident Fund and
> (B) Gratuity.
> We have agreed to leave Demand No.20 to be settled by you as sole Arbitrator and our agreement in regard to all other demands is appended herewith. We will also draw youd kind attention to the last paragraph of the Agreement appended hereto in terms of which we have agreed that the Agreement will be in force for a period of three years from the date of publication of the Award in the Official Gazette.
> Yours faithfully,
> (Signed)
> (V. Lobo), (R. Doraiswamy)
> (V.P. Menon), (N.D. O'Neal)."
> Appended to the letter are the terms of the agreement reached by the four representatives.

6. The agreement of the 9th of May, 1960, was submitted to the Chairman in the meeting of the Committee, which was held on the 10th of May. It appears that the representatives of the Union requested the Chairman to sign the agreement and declare the award in terms thereof. The Chairman, however, refused to comply as he felt that "it was not possible for me as a responsible Chairman of the Committee of arbitration to give an award on the basis of it unless I study and understand its full legal and financial implications and effects." It appears that the Chairman took the view that the agreement was obtained by the Union by unfair means. In paragraph 15 of the award, the Chairman says:-

"..... when I found on my return to Bombay on 5th May, 1960, that the attitude of the Management representatives had taken a somersault in five days' absence from the City, I just could not understand it. A reasonable and probable conjecture is always permissible even in a judicial proceeding and I do feel that the Union representatives Messrs. Lobo and Menon must have brought strong pressure to bear upon the Management representatives, to which the latter must have yielded to avoid any possibility of the threatened trouble on the occasion of the forthcoming inaugural flight of the Boeing on the 14th May, 1960."

7. A meeting of the Committee of arbitration was held on the next day, i.e., on the 11th of May, 1960. On that day the Chairman expressed the view that the document embodying the agreement was loosely worded and that it would have to be put in a proper legal form. Counsel for the Union did not attend that meeting, but Mr. S.S. Khambatta and Mr. Roy Chowdhury, who represented the Corporation, made a statement that steps could be taken to keep the formal document ready before the Chairman returned from the U.S.A. A copy of the proceedings of this meeting is annexed as Exhibit 'A' to the petition, and it appears therefrom that it was not suggested on behalf of the Corporation that in arriving at an agreement with the representatives of the Union, the representatives of the Corporation on the Committee of arbitration had acted without authority.

8. On the 14th of May, 1960, the Chairman and his wife took the inaugural flight by the 'Boeing' to the U.S.A. at the invitation of the Corporation. The circumstances in which the invitation was extended by the Corporation are unfortunately not fully disclosed by the record before us. But it is admitted by the Corporation by its affidavit that during the inaugural flight, hospitality was extended by the Corporation to the Chairman and his wife.

9. On his return to India in August, 1960, the Chairman fixed the meeting of the Committee on the 25th of August. Mr. Lobo and Mr. Menon, who represented the Union on the arbitration Committee, did not attend that meeting. The Chairman thereafter proceeded to pass an order holding that the agreement of the 9th of May, 1960, was vague and was, therefore, "hardly an agreement within the legal connotation of the term", and that "unless the agreed intention is clear there can be no legal agreement". So holding, the Chairman concluded that:-

"..... by virtue of the authority vested in me under paragraph 3 of the agreement of Arbitration, I shall proceed to decide the demands which have been fully heard, viz., all the demands covered by the arbitration with the exception of demands Nos.46, 47, 52, 53 and 54. This decision of mine will be deemed to be an award made by a single and sole Arbitrator."

10. On the 30th of August, 1960, the Union filed a writ petition (No.278 of 1960) on the Original

Side of the High Court of Bombay asking for a writ restraining the Chairman from writing and/or declaring the award on the ground that by accepting for himself and for his wife free air passages in the inaugural flight of 'Boeing' sponsored by the Corporation, the Chairman had rendered himself incompetent to decide the dispute. This petition was admitted and interim injunction as prayed for was granted. The Union also gave notice to the Corporation that the workers would strike work from the morning of the 2nd of September.

11. On the 1st of September, 1960, Mr. Shantilal Shah, the Minister for Law, Judiciary and Labour, Government of Maharashtra, invited the representatives of the Corporation and the Union for a discussion of the situation arising out of the two-fold action taken by the Union on the 30th of August, 1960. The result of the discussion has been recorded by the Minister in the form of a note, a copy of which was forwarded by him to the Chairman. The note reads thus:-

> "Re: Air-India International. I met -
> (1) Shri Lobo,
> (2) Shri Mukherji,
> (3) Shri Lakshman,
> (4) Shri Buch, and
> (5) Shri Mody.
> "They said that they were willing to advise the Union to withdraw the petition in the High Court and to withdraw the strike notice on the understanding that the Management was willing to stand by the agreement, dated 9th May, 1960, as it is.

I have explained to them that I believe that Mr. Vyas will pass an order in terms of the agreement. If however, something different happens, they will seek a remedy in law. I have also explained to them that if an order is passed in terms of the agreement, the Corporation will implement the same according to its own interpretation and if the union disagree on any point, there will be another dispute. If, however, Mr. Vyas passes an order in terms of the agreement, but with his own interpretation, the Corporation will have to implement the agreement as interpreted by Mr. Vyas. If the Union has any grievance, it will seek its remedy in law. If, however, Mr. Vyas passes an order entirely different from the agreement and the Management will implement the award, it will be for the Union to seek its own remedy in law if it is not satisfied with the award. I have told them that I will contact the management and let them know. I saw Mr. Patel and Mr. Roy Chowdhary and also called in the above gentlemen and read the note to them.
I said that each party may now take such action as it thinks proper. Mr. Patel said that the Air-India International accepts my analysis as stated above.
1st September, 1960.
(Signed) Minister for Law,
Judiciary and Labour."
Mr. Patel and Mr. Roy Chowdhury referred to in the closing portion of the note are respectively the General Manager and the Establishment Officer of the Corporation. The reaction of the

Chairman to the note recorded by the Minister can best be described in the words of the Chairman himself. In paragraphs 788 and 789 of the Award, the Chairman observes:-

> "It is clear from this note which recorded the result of the talks that took place at the residence of the Labour Minister that the four Arbitrators' Agreement, dated the 9th May, 1960, was impliedly ratified and "adopted by the parties, as though it was an agreement of the parties themselves. It was certainly an intriguing situation that at such an extremely late stage of the arbitration, when my award as a single and sole arbitrator was about to be forwarded to Government, the Management should have indicated ratification of the action of its two representatives on the Committee of Arbitration who had acted without authority from the Management in entering into the agreement of the 9th May, 1960 ..... Why then has the Management suddenly changed its position and attitude and indicated ratification of the four Arbitrator's Agreement, dated the 9th May 1960, at the very fag of the Arbitration? That is the question.

The answer to this question is not difficult to seek..... Impelled by the anxiety to avoid, circumvent and sabotage the decision of the demands on merits within the sphere of the Agreement of Arbitration, the Union's representatives on the Committee, Messrs. Lobo and Menon, appear to have started talks with the Management's representatives Messrs. Doraiswamy and O'Neil, during my absence from Bombay between the 30th April, 1960, and 4th May, 1960. Messrs. Doraiswamy and O'Neil appear to have been drawn in ..... The pressure thus brought by the Union upon the Management appears to have been resisted by the Management for sometime, but ultimately under the coercive measure of a threat or intimidation of a lightning strike, it seems to have succeeded with the result that now, quite late in the day - indeed after my award was ready and was being typed for being forwarded to Government - we have the ratification of the four Arbitrators' Agreement by the Management .....".

12. On the 7th of September, 1960, the Union sought permission to withdraw the writ petition in pursuance of its assurance to the Minister as recorded in the first paragraph of the note. The petition was dismissed by the Court for non-prosecution.

13. By the withdrawal of the writ petition and the notice of strike a situation replete with unpleasant potentialities was for the time being, at any rate, averted. The interim injunction having been vacated on the withdrawal of the petition, the Chairman proceeded to a consideration of the question whether the agreement of the 9th of May, 1960, was lawful. For fear that their force may be lost in the process of summarization, the findings of the Chairman on the validity of the agreement may be stated in his own words. The Chairman says:-

> "Now there cannot be the slightest doubt that the above agreement which was entered into by the four arbitrators on the 9th May, 1960, is not based upon any rational principle nor is it supportable of merits.....

However, in this world of many tensions, forces and influences acting and reacting all the time, merits are not always the last word and are often relegated to the background. It is my fully considered opinion that if there is any case in which merits are sacrificed to an intimidation of an industrial unrest and in which the Management has by sheer stress of circumstances felt obliged to honour a commitment into which it was landed by its representatives on the Committee of Arbitration who had no authority or directive from the management to enter into any such agreement, it is this case .....

Although the four arbitrators' Agreement dated the 9th May, 1960, is not based on merit nor on any rational logical or intelligible principle governing the revision of wage scales, grant of various allowances, regulation of working conditions, etc., since the management had adopted or ratified the said agreement, though at a very late stage and under compulsion originating from the threat of a coercive measure of a lightning strike, I would not withhold the result of this agreement from the employees. I accordingly direct that the above agreement reached by the four arbitrators on the 9th May, 1960, in respect of all the demands which were before the Arbitration Committee and subsequently ratified by the parties be implemented."

14. Having held that the Corporation had ratified the agreement and having directed that the agreement should be implemented, the Chairman proceeded to consider the question whether the agreement as it stood was capable of being implemented. Eventually, the Chairman came to the conclusion that the agreement is "vague on several material points and is likely to lead to industrial disputes unless clear instructions are given as to its implementation ..... In these circumstances in order that this award may not be a genesis of further industrial disputes and unrest, I consider it necessary to give the following directions subject to which the agreement dated the 9th May, 1960, shall be implemented." The Chairman then proceeded to give directions, which are in the nature of the interpretation of the agreement as the Chairman saw it.

15. Under the agreement of the 9th of May, 1960, demand No.20 was left to the decision of the Chairman. This demand related to the retirement benefits claimed by the workers. The Chairman rejected this demand on the ground that the agreement of the 9th of May, 1960, imposed on the Corporation a burden, which is:

> "..... substantially greater than the burden which I had on a full and thorough investigation of the demands on merits, intended to cast ..... The Union cannot both eat the cake and have the cake. They must either have the adjudication of the demands, on the basis of the principles stated in paragraph 2 of the Agreement of Arbitration or if in order to avoid the decisions of the demands on merits they choose to treat with contempt those principles, they must adhere to that position. They cannot hop about and have a bit from here and a bit from there."

16. After giving the various directions, the Chairman wound up the "Award" with a scathing condemnation of "the coercive measures adopted by the Union to stifle decision on merit." In the

last paragraph of the Award, the Chairman observes:-

> "It is true that in this case, at the point of a bayonet (threat of a lightning strike) more pecuniary benefit in some cases than would have accrued from the decisions of the demands on merit has been obtained by the employees. But a mere pecuniary benefit cannot be a justification for threats and intimidation. End does not always justify the means. Intimidation may bring in a pecuniary gain once in a way, but it can never secure permanent industrial peace. As Bhartrihari said in this country centuries ago: 'body gets old; face becomes full of wrinkles; hair becomes grey; limbs lose vitality and vigour; but human greed remains ever young'."

To seek to put a gloss on what Bhartrihari said is gratuitous but it is difficult to resist the observation that when the Bard said "Human greed remains ever young", he wailed in vain.

17. The award was declared on the 1st of November, 1960, and was published in the Official Gazette on the 7th of November. On the 9th of January, 1961, the present petition was filed to challenge the legality of the award on the grounds that the agreement of the 9th May, 1960, must hold the field, that the Chairman had no jurisdiction to sit in judgment over the agreement and to give directions or to decree that the agreement of the 9th May, 1960, shall be implemented only subject to the directions, and that by accepting hospitality of one of the parties to the dispute before him, the Chairman had rendered himself incompetent to be a Judge of the cause. The 1st petitioner is the Union, the 2nd petitioner is a worker employed in the Corporation, the 1st respondent is the Chairman Mr. D.V. Vyas, respondents Nos.2 to 5 are the members of the Committee of Arbitration, the 6th respondent is the Corporation and the 7th respondent is the State of Maharashtra.

18. Mr. Khambatta, who appears for the Corporation, has raised a preliminary objection to the maintainability of this petition. He contends that the arbitration contemplated by section 10-A of the Industrial Disputes Act is a private and not a statutory arbitration, and that, therefore, this Court has no jurisdiction to examine the correctness or legality of the orders passed by the 1st respondent. According to Mr. Khambatta, the power conferred upon the High Courts under Article 227 of the Constitution is a power of superintendence over Courts and Tribunals", and the word "Tribunals" according to Mr. Khambatta, must be construed to mean statutory and not private tribunals. To a limit., Mr. Khambatta is right because if two persons agree to abide by the decision of a third person on whom law casts no obligation or duty to act judicially, such a person would not be a "Tribunal" within the meaning of Article 227. A person or a body of persons whose proceedings may not conform to statutory requirements and who possess a discretion, as distinguished from a duty, to decide the dispute unfettered by any rules or regulations, may not be subject to the superintendence of the High Court under Article 227. The question, however, is whether an arbitrator appointed under an agreement of arbitration entered into under section 10-A of the Industrial Disputes Act is a private Tribunal or a statutory Tribunal. For a proper

decision of this question it is necessary to refer to the relevant provisions of the Industrial Disputes Act and the rules framed thereunder.

19. Section 10-A, sub-section (1) of the Act provides that the employer and the workmen may refer their disputes to arbitration, to such person or persons as may be specified in the Arbitration agreement. Under sub-section (2) the arbitration agreement has to conform to the form prescribed. Under sub-section (3) a copy of the arbitration agreement has to be forwarded to the Government which in its turn has to publish the same in the Official Gazette within 14 days from the date of its receipt. Sub-section (4) casts on the arbitrator the duty to investigate the dispute and submit the award to the Government. Section 2, sub-section (b) defines an award to include an arbitration award made under Section 10-A. Section 17 provides that the Arbitration award must be published by the Government within a period of 30 days from the date of its receipt. Sub-s.(2) of Section 17 gives finality to the award so published. Under section 17-A the award becomes enforceable on the expiry of 30 days from the date of its publication under section 17; and under sub-section (2) of section 18, an arbitration award which has become enforceable becomes binding on the parties to the agreement who referred the dispute to arbitration. Under sub-section (3) of section 19 the award remains in operation for a period of one year from the date on which it becomes enforceable subject to the powers of the appropriate Government to reduce or extend the period of its operation. Under sub-section (6) of section 19 the award continues to be binding on the parties even after the expiry of the period of its operation, until a period of 2 months has elapsed from the date on which a notice is given by a party intimating its intention to terminate the award. Section 21 makes provision for maintaining the secrecy of certain matters before the arbitrator. Section 29 which is important, makes it penal to commit the breach of any term of the award. Section 30 provides for penalty in cases of wilful disclosure of information which is required to be kept confidential under section 21. Section 33-C gives a summary remedy to a workman whereby he can recover monies due to him under an award. Section 36 confers upon the workmen the right to be represented in the proceedings before the arbitrator. Section 36-A enables the Government to refer the matter to the authorities created by the Act if there is any doubt or difficulty with regard to the interpretation of any provision of an award. Section 38 gives to the Government the powers to make rules for the purpose of giving effect to the provisions of the Act.

20. The Rules, which are framed by the Government of Bomba, make copious provisions on various important matters pertaining to the proceedings before the arbitrator. Attention in this behalf may be called to Rules 8, 9, 14, 17, 18, 20, 21, 22, 24, 26, 31, 32, 35, 83 and 87. These rules make provisions for the form of the arbitration agreement, the place and time of hearing, the power to take evidence, the manner in which the summons should be served, the powers of the arbitrator to proceed ex parte, the circumstances in which the arbitrator can correct mistakes in the award, the right of the representatives of the parties to examine, cross-examine and re-examine the witnesses and the payment of expenses of witnesses.

21. It is clear from the provisions referred to above that the proceedings before an arbitrator appointed under an agreement of reference entered into under section 10-A must conform to the requirements laid down in the Industrial Disputes Act and the rules framed there under. The rights and liabilities of the parties who refer the dispute to an arbitrator under section 10-A are governed by the provisions of the Act. The award of the arbitrator has the same force and sanctity as an award given by any other authority created by the Act, as e.g., the Labour Court, the Industrial Tribunal or the National Tribunal. A duty is cast on the arbitrator by section 10-A, sub-section (4) to submit his award to the Government, and the Government in its turn is required by section 17 to publish the award within a period of 30 days. The provisions which lay down that the arbitrator "shall investigate the dispute", that he has the power to administer oaths and that the parties shall have the right to examine and cross-examine witnesses, show that the proceedings before the arbitrator are quasi-judicial proceedings and that the arbitrator must function within the limits of his powers as defined by the Act and the Rules.We are, therefore, of the opinion that the arbitration contemplated by section 10-A has all the essential attributes of a statutory arbitration under section 10 of the Act. Even assuming, therefore, that the word "Tribunals" in Article 227 of the Constitution means statutory and not private tribunals, we are of the opinion that under Article 227, the High Court has the power of superintendence over the arbitrators who function under section 10-A of the Industrial Disputes Act.

22. In support of the argument that the arbitrator appointed under an agreement entered into under section 10-A of the Industrial Disputes Act is not a statutory tribunal. Mr. Khambatta relies upon a decision of the High Court of Kerala in *A.T.K.M. Employees' Association v. Musaliar Industries (Private) Ltd*[1]*.,* In that case, the validity of an award made by an arbitrator acting under section 10-A of the Industrial Disputes Act was challenged on the grounds that the reference was incompetent, that the award was made after the expiry of the period stipulated in the agreement of reference and that there were errors of law apparent on the face of the record. In refusing to grant the petitioners' prayer for writ of certiorari or prohibition, Mr. Justice S. Velu Pillai held that a writ of that nature could be issued only against a statutory Tribunal and not against a "private tribunal set up as arbitrator by agreement". We are with respect, unable to agree that the arbitrator functioning under section 10-A of the Industrial Disputes Act is a private Tribunal. The learned Judge has observed in his judgment that in the case of statutory arbitrators Courts are able to control the exercise of statutory jurisdiction within the limits imposed by Parliament but not so of an arbitrator of the parties' choice. As we have stated above, the various provisions of the Act and the rules indicate unmistakably that the arbitrator who functions under section 10-A of the Act must function within the limits laid down in the Act and the rules. It must also be mentioned that in coming to the conclusion that a writ of certiorari or prohibition cannot be issued against an arbitrator appointed under section 10-A of the Industrial Disputes Act, the learned Judge has largely drawn upon an English

[1](1961) 1 Lab LJ 81

decision reported in *R. v. Disputes Committee of National Joint Council for the Craft of Dental Technicians*[2]*,* Lord Goddard, C.J., who delivered the main judgment in that case observes:-

> "I have never heard of certiorari or prohibition going to an arbitrator ..... It would be an enormous departure from the law relating to prerogative writs if we were to apply these remedies to an ordinary arbitrator ....."

Now, in the first place, it must be remembered that in England, the issue of prerogative writs is largely conditioned by historical reasons. Secondly, the arbitrators against whom the writ was sought in the English case were a purely private body to whom the reference was made in pursuance of a clause in the indenture of apprenticeship and, as stated in the concurring judgment of Croom-Johnson, J., whose authority did not depend upon any statutory jurisdiction. The observations contained in the judgment of Lord Goddard, C.J., that a statutory arbitrator is a person to whom by statute the parties must resort cannot be read to mean that in no other case could a tribunal be deemed to be a statutory tribunal. The only question which arose for decision in that case was whether a writ of certiorari or prohibition could lie against what was admittedly a private body of arbitrators and in repelling the argument that it could, the learned Law Lord has mainly relied upon English practice. It must also be mentioned that the question whether, if a writ of certiorari or prohibition could not lie, the High Court could exercise its powers of superintendence under Article 227 was not canvassed before the Kerala High Court.

23. The present petition has been filed both under Articles 226 and 227 of the Constitution. In view of our conclusion that an arbitrator functioning under the powers conferred by section 10-A of the Industrial Disputes Act is subject to the judicial superintendence of the High Court,it must follow that the orders passed by such an arbitrator, who acts as a quasi-judicial body, are capable of being corrected by a writ of certiorari, provided of course there is an error of law apparent on the face of the record. We will not be justified in converting ourselves into a Court of appeal to correct mere errors of law nor indeed will we be justified in exercising under Article 227 powers larger than the powers possessed by us under Article 226 of the Constitution. Whereas under Article 226, an order can be quashed for the reason that there is an error of law apparent on the face of the record, under Article 227 our jurisdiction is limited to ensuring that the tribunal acts within the limits of its authority.

24. Having disposed of the preliminary objection, the next question is as to what is the true construction and effect of the agreement of reference dated the 1st April, 1959. Clause 3 of the agreement, which is the bone of contention, provides:-

> "We further agree that the unanimous decision of the arbitrators shall be binding on us. In the event of there being no unanimity amongst the Arbitrators, the decision to be made by the independent Chairman nominated by Government will be deemed to be an award made by a single and sole arbitrator."

Under clause (1) of the agreement the parties agreed to refer their disputes "to the Arbitration of a

Committee of Arbitration, consisting of two representatives of the

[2](1953) 1 All England Reporter 327

Management of Air India International Corporation and two representatives of the Air Corporations Employees' Union, with an independent Chairman of the status of a Judge of the High Court to be nominated by Government." The question is whether the words 'unanimous decision of the arbitrators' which occur in clause (3) mean the unanimous decision of the four representatives of the parties as contended by Mr. Singhavi, or whether those words connote the unanimous decision of the four representatives and the Chairman as contended by Mr. Khambatta. The Chairman, who is the 1st respondent to the petition, has construed clause (3) to mean that unless he agreed with the unanimous decision of the four representatives, there could be no "unanimous decision of the arbitrators" within the meaning of clause (3) of the agreement. In our opinion, the only possible construction that can be placed on clause (3) is that if the representatives of the parties arrived at a unanimous agreement, that agreement was to be considered as binding on the parties. The words used in clause (3) of the agreement emphasize the antithesis between the arbitrators on the one hand and the independent Chairman on the other. It was hardly necessary to provide that the unanimous decision of all the five members of the Committee of Arbitration would bind the parties because, even if it was not so provided, such a unanimous decision would in any case bind the parties; for then, the award, which would reflect the unanimity, would become binding and enforceable by the combined operation of Sections 17-A, 18 and 29 of the Industrial Disputes Act. To construe clause (3) of the agreement in the manner which commended itself to the Chairman, is to confer upon him powers which were clearly not in the contemplation of parties. The Corporation and the Union had made numerous attempts to settle their disputes by negotiation and the earlier attempts had borne some; if not full fruit. It seems to us strange to attribute to the parties an intention that even, if they settled their differences, the Chairman could still impose upon them an award of his own.The very scheme adopted by the parties indicates that they agreed to be bound by the decision of an independent Chairman of acknowledged status and proved impartiality if, and only if, they themselves were unable to arrive at an amicable settlement of their disputes. To hold otherwise would be to reduce the four representatives of the parties to the position of assessors, for, whatever decision they came to would have no bearing on the ultimate decision of the dispute. If as representatives of the respective parties on the Committee of Arbitration, they reached an agreement, that would still maintain intact the powers of the Chairman to proceed on his own; if they did not reach an agreement between themselves, the Chairman was of course competent to give his own award. For these reasons, we are unable to accept the strained construction put upon the agreement by the Chairman whereby he arrogated to himself a power which can be likened to a power of veto. In treating the unanimous agreement of the four arbitrators as of straw, and in proceeding to deliver his award as that of a sole and single arbitrator, the Chairman has, in our opinion, assumed jurisdiction which he did not possess. We are even prepared to assume that in disregarding the agreement of the 9th May 1960, the Chairman was actuated by beneficent motives as stated by him in his award; but a contract is not the less binding because to an impartial observer it appears to be vague and unreasonable. The moment the four representatives

reached a unanimous agreement, the Chairman became functus
officio and the directions which he has engrafted on the agreement must be ignored.

25. Mr. Khambatta says that the agreement of 9th May, though unanimous, was tentative. He seeks to derive support for this plea from the endorsement made on the agreement to the effect "subject to scrutiny". In this connection, it must be remembered that on the 10th and 9th May 1960, when the Committee of Arbitration held its meetings, no suggestion was made by or on behalf of the Corporation that the two representatives of the Corporation had no authority to bind the Corporation by any agreement they had reached with the representatives of the Union or that the agreement was tentative. It appears that the agreement was reduced into writing on the night of the 8th of May and the endorsement "subject to scrutiny" was made so as to enable the parties to correct clerical errors. Mr. Doraiswamy, who was one of the two representatives of the Corporation on the Committee of Arbitration, has filed an affidavit before us. The averments made in paragraph 4 of the affidavit make it clear that all that was meant by the remarks "subject to scrutiny" was that the agreement was to be presented for the scrutiny of the Committee of Arbitration. In fact, the Chairman has held that the agreement was ratified by the Corporation. The covering letter which the four representatives sent to the Chairman on the 9th May also shows that the agreement was final and not tentative.

26. Mr. Khambatta has urged that Mr. Doraiswamy and Mr. O'Neil, who were the representatives of the Corporation on the Committee of Arbitration, had no authority to enter into any agreement so as to bind the Corporation. Now, Mr. Doraiswamy has stated in paragraph 3 of his affidavit that on the 4th May 1960, the Chairman of the Corporation told the representatives of the Union that though the Management itself would not participate in any negotiations in view of the pendency of arbitration proceedings, still the Management would not prevent the four members of the arbitration Committee from reaching an agreed solution. Then again, the want of authority in its representatives was not pleaded by the Corporation when the agreement was placed before the Committee of Arbitration on the nth of May 1960. Instead, Mr. Roy Chowdhury and Mr. S.S. Khambatta who appeared for the Corporation and Mr. Doraiswamy himself proceeded on the basis that the agreement was binding on the Corporation and that all that was left to be done was to give a legal form and shape to the agreement. That explains the observation made by the Chairman in the meeting of the 9th May to the effect that:

> "the Corporation could go ahead in making the necessary preparations on the basis of the document....."

Lastly, the Chairman has held in paragraphs 788 and 793 of his award that the agreement was, at any rate, ratified and adopted by the Management of the Corporation. There can be no doubt that the agreement was treated by the Corporation as binding on itself, for, that is the very basis of the note recorded by the Law Minister on the 1st September 1960. In our opinion, Mr. Doraiswamy and Mr. O'Neil possessed the necessary authority to bind the Corporation by the agreement and,

in any case, the Corporation has ratified the agreement as if it were an agreement between itself and the Union.

27. If the construction placed by us on clause (3) of the agreement is correct and if the agreement is binding on the Corporation, did the Chairman have the jurisdiction to interpret the agreement and to decree that the agreement shall be implemented only subject to his directions? In considering this question, it is in the first place necessary to remember that the Chairman has himself accepted the agreement of the four representatives. In paragraph 793 of the award the Chairman says that though it seemed to him that the agreement of the 9th May was not based "on merit, nor on any rational, logical or intelligible principle ..... since the management had adopted or ratified the said agreement ..... I would not withhold the results of this agreement from the employees. I accordingly direct that the above agreement reached by the four arbitrators on the 9th May 1960 in respect of all the demands which were before the "Arbitration Committee and subsequently ratified by the parties be implemented." As we have held earlier, the concurrence of the Chairman with the unanimous conclusions of the four arbitrators was really a matter of no consequence but if indeed it was, the Chairman, having concurred with those conclusions, had no jurisdiction to proceed to interpret the agreement. If any difficulty or doubt arose as to the interpretation of any term of the agreement, it would have been open to the Government under Section 36-A of the Industrial Disputes Act to refer the question to the authorities mentioned in that Section. In holding that the agreement shall be implemented subject to his directions the Chairman has partly usurped jurisdiction which is vested in the Tribunals mentioned in Section 36-A and he has partly made and imposed upon the parties a contract of his own. In our opinion, the directions given by the Chairman in paragraph 794 of his award suffer from an absence of jurisdiction and must therefore be set aside.

28. Paragraphs 6 and 9 of the petition contain an allegation that during the pendency of the arbitration proceedings, the Chairman Mr. D.V. Vyas had obtained for himself and his wife, free air passages from Bombay to New York and back in the inaugural flight of the 'Boeing', which was sponsored by the Corporation. Mr. Singhavi contends that by accepting hospitality from one of the parties to the dispute which was pending before him, the Chairman rendered himself incompetent to hear and decide the dispute. The allegation of misconduct is traversed by the Corporation in paragraph 13 of the affidavit of Mr. A.S. Banavalikar who is the Personnel Manager of the Corporation. Mr. Banavalikar says in his affidavit that the remuneration of the Chairman was fixed at Rs. 60,000 plus two return air passages to the U.S.A., that by putting the Chairman and his wife on the inaugural flight which had free seats, the Corporation in fact saved the value of two return fares; and lastly that the Chairman "was not given any hospitality other than that which was given to the other guests of the 6th respondent during the said inaugural flight to New York." The affidavit of Mr. Banavalikar is vague firstly as regards the circumstances in which the remuneration of the Chairman was fixed partly in cash and partly in kind, and secondly as regards the nature of hospitality extended to the Chairman during the flight and in the States. We must, however, mention that Mr. Khambatta adopted a very fair attitude

and was willing to place before us such material as would enable us to come to a proper conclusion on this issue. The minutes of the 32nd Meeting of the Corporation which was held in October 1959 show that the Chairman had originally suggested that his fees should be fixed on an hourly basis at the rate of Rs. 150 per hour but that he finally agreed to accept a lump sum of Rs. 60,000. The minutes do not show that it was also agreed to give the free air passages to the Chairman but it appears that the reference was not made because the Chairman and his wife, like other passengers on the inaugural flight, were invitees. It seems to us a little odd that the remuneration of the Chairman should have been fixed partly in cash and partly in kind. The proceedings before the Arbitrators under Section 10-A of the Industrial Disputes Act are quasi-judicial in character and a payment in kind is not an appropriate mode in which the fees of an arbitrator could be paid. In this case we are fortunately dealing with a Public Corporation and we have no doubt that in fixing the remuneration of the Chairman partly in kind, the Corporation, on its own part, was not actuated by any desire to secure an unfair advantage from the Chairman. The fact, however, remains that in addition to the two free air passages which may be assumed to be a part of the fees of the Chairman, hospitality was extended by the Corporation to the Chairman and his wife for a period of about seven days during their stay in the U.S.A. In the absence of any affidavit by the Chairman, we have no reason to suppose that the hospitality thus received by the Chairman and his wife was too formal or niggardly to merit attention. Courts have always zealously upheld the principle that it is not merely sufficient that justice is done but that justice must be seen to be done.In our opinion, by accepting for himself and his wife, hospitality from one of the parties to the dispute before him, the Chairman rendered himself incompetent to be a Judge of the cause before him. The directions given by the Chairman cannot, therefore, be permitted to form a part of the award.

29. It is true that by reason of sub-sec.(5) of Section 10-A of the Industrial Disputes Act, the provisions of the Arbitration Act, 1940, do not apply to arbitrations under Section 10-A. That cannot, however, mean that an arbitrator acting under Section 10-A is in the privileged position of being immune from rules of correct conduct and that as an arbitrator he could be as arbitrary as he chose.Even if the Arbitration Act is inapplicable to arbitrations under Section 10-A and even though the Industrial Disputes Act does not contain provisions similar to those contained in the Arbitration Act by which an award can be set aside for misconduct of the arbitrator, once it is held that the proceedings of an arbitrator acting under Section 10-A are quasi-judicial in character, the arbitrator must be held bound to observe, in spirit if not in letter, the rules of conduct which implicitly govern all judicial proceedings.

30. It is not necessary to deal in details with Mr. Singhavi's grievance that the directions given by the Chairman furnish intrinsic evidence to show that the Chairman developed a bias against the Union. It will be sufficient to call attention to a few of the directions given by the Chairman, to demonstrate that these directions limit the scope of the agreement and substantially alter its terms. For example, whereas under the agreement of the 9th May, the revised scales of pay and the revised grades were to be given retrospective effect from 1st January 1959, by Direction

No.1, the Chairman has ordered that the benefit of the agreement should be extended only to such employees who were on the pay roll of the Corporation on the date of publication of the award. By Direction No.2 the Chairman has directed that the benefit of agreement under demand 1 E (b) should be given only to those employees who had become permanent on or before 1st January 1959 and who had put in a service of at least one year on the 1st January 1959. The agreement contains no such qualifications. Then again, whereas the agreement provides that retrospective effect to new scales be given from 1st January 1959, the Chairman by Direction No.6 has decreed that the dearness allowance, the overtime allowance and other allowances be paid with effect from the date of publication of the award. We must mention that we are not prepared to hold that the Chairman has deliberately given these directions with a view to favoring the Corporation but the circumstance that some of the directions given by the Chairman do in fact cut down the benefits which the workers were entitled to receive under the agreement only shows that the Union had reason to believe that the Chairman had approached his task with a bias against the workers.

31. We are unable to accept the contention of Mr. Khambatta that though the allegation of bias is made in the petition, it is not made a ground of attack against the directions given by the Chairman. Facts necessary to found the plea of bias or misconduct are clearly set out in the petition and they are traversed in the affidavit filed on behalf of the Corporation. It may be that the petition is inartistically worded but there is no justification for the submission that the allegations of misconduct are made in the petition as a matter of historical narrative.

32. Mr. Khambatta then urges that we should refuse to grant relief to the petitioners on the ground of bias because: (i) the petitioners participated in the proceedings before the Committee of Arbitration even after acquiring knowledge that the Chairman had obtained free air passages from the Corporation; (2) the petition which was filed by the petitioners on the Original Side of the High Court was dismissed for non-prosecution; and (3) that the petitioners had obtained benefit under the award of the Chairman which they now seek to challenge. We will proceed to a consideration of these objections in the order in which they are set out above.

33. As regards the first objection, it seems to us that far from participating in the proceedings before the Committee, the petitioners indicated in no uncertain manner at the earliest opportunity that the Chairman had forfeited their confidence. The Chairman left India on the 14th of May 1960 and returned in the middle of August. The first meeting of the Committee after the return of the Chairman to India was fixed on the 25th August. Mr. Lobo and Mr. Menon who represented the Union on the Committee of Arbitration refused to attend that meeting as stated by the Chairman in paragraph 22 of his award. The Union also followed suit with the result that no business could be transacted in the meeting of the 25th. On the 30th August, the Union filed a writ petition on the Original Side of the High Court asking that the Chairman be restrained from acting further in the matter on the ground that he had accepted hospitality of the Corporation. It is, therefore, impossible to hold that the petitioners lay by and acquiesced in the attitude of the

Chairman.

34. There is no substance in the second objection, as the petition which was filed on the Original Side was not dismissed on merits. Permission was sought for the withdrawal of that petition in view of the note recorded by the Law Minister on the 1st September, 1960 and the petition was eventually dismissed for non-prosecution on the 7th September. The earlier petition not having been decided on merits, the dismissal thereof cannot operate as a bar to the present petition.

35. The third objection raised by Mr. Khambatta is that the petitioners cannot be allowed to approbate and reprobate, that having obtained benefits under the award of the Chairman, it is not permissible to the petitioners to assail the award. The Chairman declared his award (that is to say, the agreement of 9th May, 1960, on which were superimposed the directions of the Chairman) on the 1st November, 1960, and the same was published in the Official Gazette on the 7th November, 1960. The note recorded by the Law Minister shows that the Corporation had agreed to implement the agreement of the 9th May as interpreted by the Chairman. The Corporation, therefore, proceeded to obtain the sanction of the Central Government to the new conditions of service of the workers as required by section 45(2)(b) of the Air Corporations Act, 1953. In anticipation of the sanction, the Corporation served individual notices on the employees between the 1st and 10th January, 1961, that it proposed to implement the agreement of the 9th May, 1960, as interpreted by the Chairman. The sanction of the Central Government was obtained on the 30th January, 1961, and the salaries or wages were paid to the employees in accordance with the directions of the Chairman, on or about the 1st February, 1961. Mr. Khambatta submits that by accepting the payment the employees had obtained the benefit of the award of the Chairman and that therefore they cannot be permitted to turn round and challenge the award. All that is necessary to state in answer is that on the 9th January, 1961, the present petition was filed to challenge the award of the Chairman. It is true that the workers did not send any reply to the individual notices served on them by the Corporation but they made a more effective reply by filing the present petition. That the Corporation abided by the award of the Chairman is not a matter of merit for in doing so, it only honoured its commitment to the Law Minister. The workers on their part, chose the course foreseen in that note.

36. This disposes of all the objections raised on behalf of the Corporation. The question now is whether, as urged by Mr. Khambatta, we must set aside both the agreement of the 9th May, 1960, and the directions given by the Chairman or whether as contended by Mr. Singhavi, we should only set aside the directions. In our opinion, the agreement which the four representatives had arrived at on the 9th of May, 1960, is clearly severable from the directions issued by the Chairman. In fact, what we have before us is a lawful agreement on which are superimposed directions which are without jurisdiction. There is, therefore, no difficulty in giving effect to the agreement apart from the direction.

37. In conclusion, we uphold the agreement which the four representatives had arrived at on the

9th of May, 1960, and set aside the directions issued by the Chairman. The agreement has already been published in the Official Gazette as a part of the Award of the 1st respondent and it is, therefore, unnecessary to have it re-published.

38. The decision of the Chairman on demand No.20, which was left to his adjudication by the agreement of the 9th May will stand, as the petitioners have not asked for any relief in that behalf. If such relief was asked for, we would have had no hesitation in setting aside the decision of the Chairman on this demand. The Chairman has rejected the demand not on merits, which he was called upon to do, but for an extraneous reason that the workers "cannot hop about and have a bit from here and a bit from there", by which is presumably meant that the workers cannot be given the benefit of the agreement as well as of the decision on merits. The parties themselves entered into an arrangement whereby disputes on all the demands except Demand No. 20 were settled and Demand No.20 was left to the judicial determination of the Chairman. It was, therefore, not open to the Chairman to question the wisdom or propriety of the very agreement under which he derived authority to adjudicate upon Demand No.20. The parties had unequivocally expressed their intention that, the Chairman should hear and decide the dispute on Demand No.20 on merits. This he failed to do and in our opinion, wrongly. We understand that their Lordships of the Supreme Court have recently held that in exercise of the powers conferred by Article 227 of the Constitution, the High Court can even act suo motu. A power possessed need not, however, be necessarily exercised and we do not feel called upon to do so. The petitioners having chosen to challenge the award partially, it would not be legitimate to give them a relief which they have declined to ask for.

39. For these reasons, the petition succeeds and the rule will be made absolute. The State of Maharashtra which is the 7th respondent, has submitted to the orders of the Court. The petitioners will be entitled to get the costs of the petition from the 6th respondent, the Corporation.

Patel. J.

40. I have read the judgment prepared by my learned brother and I agree generally with what he has said. Since, however, the matter is of some importance, I would like to express my views on some important aspects.

41. Respondent No.6 is a statutory Corporation constituted under the Corporations Act of 1953, to which I will hereafter refer to as the Corporation. Petitioner No.1, the Union of Employees of the Corporation, served a charter of demands on the Management. Attempts to settle the dispute by negotiations failed. Again, on the 11th of August, 1958, the Union submitted to the Management revised charter of 57 demands. The negotiating Committee on behalf of both succeeded in finding agreed solutions in respect of some demands, and the Union gave up three of its demands. As regards the rest, a separate agreement for reference of the dispute to an

arbitration Committee under section 10-A of the Industrial Disputes Act (Act No.XIV of 1947) was executed. Only two of its terms, i.e., the first and the last, are important for the present case. By the first term the parties agreed to refer the disputes to a Committee of arbitration consisting of two representatives of the Management of the Corporation and two representatives of the Union with an independent Chairman of the status of a Judge of the High Court to be nominated by the Government. By term No.3 it was provided that:

> "We further agree that the unanimous decision of the arbitrators shall be binding on us. In the event of there being no unanimity amongst the Arbitrators, the decision to be made by the independent Chairman nominated by Government will be deemed to be an Award made by a single and sole Arbitrator."

As required by sub-section (3) of section 10-A, after the copy of the agreement was forwarded to the Government it was published by the Government. On 27th of June, 1959, the State Government nominated respondent No.1, a retired Judge of this Court to be the independent Chairman. The two representatives of the Corporation were respondents Nos.2 and 3 and those of the Union respondents Nos.4 and 5. On the 29th of April, 1960, hearing on all the demands except demand Nos.46, 47, 52, 53 and 54 was closed, and it seems that respondent No.1 had commenced writing of his Award. On the 9th of May, 1960, the four arbitrators nominated by the parties arrived at an agreement on all the demands except demand No.20. They agreed that demand No.20 should be settled by the Chairman as the sole arbitrator. This agreement was termed 'consent Award' and was forwarded to the Chairman on the same date under the signature of all the four arbitrators. The Chairman was of the view that this agreement was not legal, was not in proper shape and was vague in many particulars and would create further industrial unrest and disputes. He was also of the view that the four arbitrators on the Committee of arbitration had no right to so decide the matter. He thought that as he did not agree with the decision he was entitled under the terms of reference to act as the sole and independent arbitrator, and proceeded to do so.

42. The representatives on behalf of the Union objected to the independent Chairman doing so and did not attend any meeting after he made it clear that he was not bound by the agreement. On the 14th of May, 1960, the Chairman and his wife proceeded to the U.S.A. by the inaugural flight by the 'Boeing' at the invitation of the Corporation. He returned to India in August of 1960 and proceeded with the work of the Award. He called a meeting which the representatives of the Union did not attend. In 30th August, 1960, the Union filed a writ petition being No.279 of 1961, on the Original Side of this Court praying for the issue of a writ restraining respondent No.1 from writing or declaring the award on the ground that as, he had accepted free air passages by the 'Boeing' at the invitation of the Corporation, he had incapacitated himself from deciding the dispute. The Union also gave notice to the Corporation that the workers would strike work from the morning of 2nd of September.

43. On the 1st of September, 1960, the Minister for Law, Judiciary and Labour invited the representatives of the Corporation and Union for discussion of the situation. As a result of discussion, certain arrangement was arrived at, which the Minister recorded. In view of the arrangement arrived at in the presence of the Minister, on the 7th of September, 1960, the Union asked permission of the Court to withdraw the writ petition. It was dismissed by the Court for non-prosecution. As the 1st respondent took the view that the agreement of the four arbitrators was vague on several points and was likely to lead to industrial disputes unless clear instructions were given as to its implementation, he proceeded to give directions on several of the agreed points. As to demand No.20, which was left to the decision of respondent No.1, he rejected the demand on the ground that:

> "The Union cannot both eat the cake and have the cake. They must either have the "adjudication of the demands on the basis of the principles stated in paragraph 2 of the agreement of Arbitration or if in order to avoid the decisions of the demands on merit they choose to treat with contempt those principles, they must adhere to that position. They cannot hop about and have a bit from here and a bit from there."

He declared his award on the 1st of November, 1960, which was published in the Official Gazette on the 7th of November.

44. On the 9th of January, 1961, the present filed to challenge the legality of the Award on the grounds that: (1) the Chairman having agreed with the decision of the arbitrators could not thereafter proceed to give directions in its implementation; (2) in any case, since the four arbitrators of the parties had taken the decision unanimously, the Chairman had no right to impose his own decision in derogation to the decision arrived at by the arbitrators; and (3) that by accepting the free air passages and the hospitality of the Corporation he incapacitated from being arbitrator.

45. Mr. Khambatta, who appears on behalf of the Corporation, has raised a preliminary objection and argued that no writ can be issued by this Court inasmuch as the Committee of arbitration functioned as private arbitrators under section 10-A. Mr. Khambatta relies for this contention on a decision of the Kerala High Court, by Mr. Justice S. Velu Pillai in the case reported in (1961) 1 Lab LJ 81, which undoubtedly supports him.

46. Industrial Disputes Act constituted special Tribunals to deal with industrial disputes. Under the scheme of the Act, attempt is first made to bring about settlement by negotiations. If the attempts at negotiations fail, then under section 10, the State Government is entitled to refer the disputes to either the Labour Court, Tribunal or the National Tribunal constituted under the Act. Consistent with the principle of agreed settlement of disputes, by section 10-A an innovation was made by which parties were enabled to nominate their own arbitrator instead of the Tribunals

under the Art. An agreement has to be entered into in the form prescribed. Under sub-s.(3) of Section 10-A, it is to be forwarded to the appropriate Govt. The Government is required to publish the same in the Gazette and thereafter the arbitrator has to enter into the reference. Sub-section (4) makes it obligatory on the arbitrator to investigate the dispute and submit his award to the appropriate Government. Sub-section (5) excludes the application of the Arbitration Act 1940. Under section 11 the arbitrator is required to follow the procedure prescribed by the rules framed under the Act. Most of the rules framed in Part III of the rules in respect of powers, procedure and duties apply as much to the arbitrator as to the Tribunals constituted under the Act. It is no doubt true that rules 15, 16, 17-A, 19, 23, 25, 27, 28 and 30 do not apply. In other respects he is in the same position as a Tribunal under the Act, the decision of both being defined as award by section 2 sub-section (6). Section 17 places his award and that of a Tribunal constituted under the Act in the same position and it is as binding and final as that of the Tribunal. Non-compliance with the award carries the same penal consequences as in the case of an award by the Tribunal. These provisions make it amply clear that though the arbitrator is initially appointed by the parties, his position is not different from that of a Tribunal constituted under the Act.

47. It is now well established that a Tribunal constituted under the Art is subject to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution inasmuch as it is held to fall within the word "Tribunals" in Article 136. In the case of *Bharat Bank Ltd. v. Employee's of Bharat Bank Ltd*[3]*.,* while considering the application of Article 136 of the Constitution in reference to a Tribunal under the Act, an argument was raised that the award of such a Tribunal under the Act was nothing but an award of an arbitrator and that the Court would have no jurisdiction. In support of the argument, reliance was placed on the case of *Rola Co. (Australia) Pvt. Ltd. v. Commonwealth*[4]*,* and in connection with that case Mr. Justice Mahajan says at p.494 (of SCR) : (at p.202 of AIR):-

> "The award given by an Industrial Tribunal in respect either of bonus or higher wages, etc., is enforceable by its own force and by the coercive machinery of the Act and it is not merely a declaration of a character that furnishes a cause of action to the employee to bring a suit on its foot to recover the wages. An arbitral tribunal's decision cannot be enforced unless it has the sanction of a Court of justice behind it but the award of the Tribunal is enforceable under the Act itself by the coercive machinery provided therein."

In view of what I have stated above, an arbitrator under section 10-A is subject to the jurisdiction of this Court under Articles 226 and 227. In the case relied upon by Mr. Khambatta i.e., (1961) 1 Lab LJ 81, reliance was also placed on the case of (1953) 1 QB

[3]1950 SCR 459 : (AIR 1950 SC 188)

[4]69 CLR 185

704. In the latter case, a writ was sought against a private arbitrator to whom arbitration Act applied and whose award was open to challenge in the ordinary way. The learned Chief Justice observed:

> "There is no instance of which I know in the books 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."

When applying the English principles, one must bear in mind the fact that in England the power is of gradual growth. Originally writs of prohibition and certiorari were issued to inferior Courts and in course of time, as exigencies of changing circumstances demanded, they were issued to other Tribunals. So far as the High Courts in India are concerned special provision is contained in Articles 226 and 227 of the Constitution, and therefore in respect of the powers of the High Courts, the analogy of English law would not be appropriate. It is for this reason that in *T.C. Basappa v. T. Nagappa*[5], it was observed:

> "In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges."

The language of Articles 226 and 227 is very wide and is unqualified. The award has far reaching consequences and there is no method by which such an award can be challenged. In view of the peculiar position of the Arbitrator under section 10-A, even if he is not exactly a Tribunal under the Act he is so very like it, that he must be held to be a "Tribunal" under Article 227 of the Constitution, and as such he is subject to the jurisdiction of the High Court under Articles 226 and 227. With respect, therefore, it is difficult to agree with the decision in the case of (1961) 1 Lab LJ 81.

48. Though the words of Article 227 are very wide, the jurisdiction is merely supervisory. The exercise of jurisdiction is subject to the well-known and now well-established limitations, a writ being generally granted if a Tribunal acts without or in excess of jurisdiction. Absence of jurisdiction may arise out of several causes and similarly may be lost for several reasons. A Tribunal may suffer from incapacity or disability by reason of its very constitution or by reason of some extraneous circumstances, and if a clear case is made out where it has acted without jurisdiction or in excess of jurisdiction, and justice demands, the Court is entitled to interfere.

49. So far as the first ground of attack is concerned, it is not possible to accept the contention raised on behalf of the petitioners. It is no doubt true that in paragraph 793 of his Award, respondent No.1 says:

> "I would not withhold the results of this agreement from the employees. I accordingly direct that the above agreement reached by the four arbitrators on the 9th May, 1960, in respect of all the demands which were before the Arbitration Committee and subsequently ratified by the parties be implemented."

But then, this is not all. He proceeds in the same paragraph immediately thereafter to say [5](1955) 1 SCR 250 at p.256 : (AIR 1954 SC 440 at p.443) that:

> "This agreement, however, as it stands is vague on several material points and is likely to lead to industrial disputes unless clear instructions are given as to its implementation .....

In these circumstances, in order that this award may not be a genesis of further industrial disputes and unrest, I consider it necessary to give the following directions subject to which the agreement dated the 9th May, 1960, shall be implemented." One must read the paragraph as a whole. Everything cannot be said either in one word or in one sentence. On a fair construction of the paragraph, it seems that respondent No.1 agreed to the implementation of the decision of the four arbitrators, subject to his directions.

50. On the second question, i.e., jurisdiction, the contentions of the petitioners must be accepted. I agree with my learned brother that the agreement can have only one interpretation and that is, if the four arbitrators appointed by the parties unanimously agreed, the Chairman lost jurisdiction to act as a sole arbitrator. Giving a fair and reasonable meaning to the terms of reference, it is clear that the parties could not have intended to make him the sole arbitrator at his choice by disagreeing with the four arbitrators. There is no substance in the contention made on behalf of respondent No.6 that the four arbitrators were not authorised by the Corporation to act as they did. Their authority was derived from the reference itself and was not required to be under any other arrangement. The affidavit filed by respondent No.2 nominated on the Committee of arbitration by the Corporation, particularly paragraph 9 shows that the agreement was arrived at as members of the Arbitration Committee and not as representatives on behalf of the party. It is also further clear from paragraph 3 of the said affidavit that even the Chairman of the Corporation was not averse to the four arbitrators, i.e., respondents Nos.2, 3, 4 and 5, as such attempting to reach agreed solutions in respect of the demands which were referred to the Committee. Same inference arises from the affidavit of Banavalikar on behalf of the Corporation. It must, therefore, be held that respondent No.1 lost jurisdiction to decide the matter as the sole and independent arbitrator.

51. It is also clear that the third ground of challenge must also succeed. The averments in respect of this contention are made in paragraphs 6 and 9 of the petition. Mr. Banavalikar on behalf of the Corporation states in his affidavit that after negotiations it was agreed that the remuneration of respondent No.1 would be Rs. 60.000/- plus two return air passages to the U.S.A. He was invited to the inaugural flight when the Boeing service was started in the month of May. Along with the respondent and his wife, there were other guests and Mr. Banavalikar has stated that the 1st respondent was not given any hospitality other than that which was given to the other guests. The implication being that at least for seven days that the guests were in the U.S.A., the 1st respondent and his wife enjoyed the hospitality of the Corporation. There can be no doubt that

the hospitality could not have been niggardly. The acceptance of such hospitality during the pendency of arbitration would clearly amount to legal misconduct. It may be that a single lunch or some entertainment at tea during the pendency of an arbitration proceeding accepted by an arbitrator may not amount to such misconduct as to vitiate an award if no prejudice is shown. Even in such cases Courts have not looked upon such indiscretion of even lay arbitrators with any amount of favour and such conduct has been severely criticized.

52. It is argued on behalf of the petitioners that even if it is necessary to show that there is prejudice sufficient evidence of it is to be found in the directions given by respondent No.1. My learned brother has dealt with them and it is not necessary for me to traverse the same ground over again. The language used in the Award is far too strong in several places and the quotation from Bhartrihari in the last paragraph of his award and comparison of the demands of the employees with "the ever young greed of humans" would appear to be uncalled for. His criticism taken along with the directions, some of which appear to be prejudicial to the employees, are sufficient to vitiate the directions and they must, therefore be quashed. As there is no prayer that the decision on demand No.20 be also quashed, it is not necessary to quash it.

53. It was argued by Mr. Khambatta that the petitioners have not made this allegation as a ground of attack to the Award. It is no doubt true that it is not specifically taken in the grounds as such. But in the petition itself specific allegations have been made which were also made in the previous petition under Article 226 of the Constitution filed on 30th of August, 1960. It is clear, reading the petition as a whole, that this was intended as a ground for attacking the Award.

54. It is not necessary to deal with the other grounds, which have been dealt with by my learned brother.

Petition allowed.