RAJASTHAN HIGH COURT

Good Year India Ltd.

Vs.

Industrial Tribunal, Rajasthan

Civil Writ Petn. No. 290 of 1967
(D.M. Bhandari and G.M. Mehta, JJ.)

08.05.1968

JUDGMENT

Mehta, J

1. This is a writ petition under Article 226 of the Constitution by the Good Year India Ltd. praying for quashing the order of reference dated 16th May, 1967 by the Government of Rajasthan to the Industrial Tribunal, Jaipur and for an injunction restraining the respondents from proceeding with the purported adjudication.

2. The petitioner, Good Year India Ltd., is a company duly incorporated under the Indian Companies Act having its Head Office at 225-C Acharya Jagdish Bose Road, Calcutta with branches at many places in India including the one at Swastika House, Station Road, Jaipur. Sri A. A. Dhingra ; respondent No. 4 was previously sales representative of the Company at Jullunder. In January, 1954, he was posted at Jaipur in the same capacity. On April 1, 1964 he was made sales assistant and on 1st January, 1966 he was made area supervisor. As an area supervisor, Sri Dhingra was in charge of the whole of the State of Rajasthan and a few towns of Madhya Pradesh. On 16-12-66, when his services were terminated by the Company, he was drawing a salary of Rs. 763.36 (Rs. 706 basic salary plus Rs. 57.36 paise dearness allowance) besides a sizable amount as sales bonus. He was directly responsible to the District Manager of the Company stationed at Delhi. For business purposes, Delhi district of the Company comprised the States of Punjab, Rajasthan, Himachal Pradesh, Kashmir, Hariyana, part of Uttar Pradesh and Madhya Pradesh. Annexure 'A' is a copy of the letter dated 16-12-1966, by which the employee's services were terminated.

3. According to the petitioner, the duties of the employee were of a supervisory nature. His duties did not involve any manual, technical or clerical work. Further the

employee's salary was at all material times more than Rs. 500 per month. He was, therefore, not a workman within the definition of Section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter called the Act).

4. After the termination of the employee's services, the District Manager of the petitioner received a communication from the Regional Assistant Labour Commissioner and Conciliation Officer, Jaipur, dated 3rd January, 1967 (Annexure 'C') along with a copy of the representation addressed by Sri Dhingra to the Conciliation Officer (Annexure B) asking the District Manager to appear before him on 17-1-67 at 11 A.M. In the conciliation proceedings, it was contended on behalf of the petitioner that Sri Dhingra was not a workman within the meaning of Section 2 (s) of the Act and that, therefore, the conciliation proceedings were without jurisdiction. The petitioner elucidated its stand that Sri Dhingra was not a workman within the meaning of the Act by its representation dated 28th February, 1967 (Ex. D) filed before the Conciliation Officer. Sri Dhingra reiterated that he was a workman. The conciliation proceedings did not bear any fruit. The Conciliation Officer made a report to the Government of Rajasthan under Section 12 (4) of the Act on the 3rd of March, 1967 intimating failure of conciliation between the petitioner and Sri Dhingra (Annexure E).

5. The petitioner submitted representation to the Government of Rajasthan, Department of Labour on 10th March, 1967 along with a memorandum pointing out that Sri Dhingra was not a workman, that in spite of the petitioner's insistence, the Conciliation Officer did not decide, whether Sri Dhingra was a workman within the meaning of Section 2 (s) of the Act and that, therefore, the conciliation proceedings were without jurisdiction (Annexure F). On 18-4-67, the Government of Rajasthan in the Labour and Employment Department informed the petitioner and Sri Dhingra that it did not consider it a fit matter for reference to adjudication. The Government's letter reads as below:-

> "I am directed to say that on consideration of the failure of conciliation report it is felt that Sri Dhingra's main job was that of supervisory nature. Clerical work was only incidental. Looking to salary and other aspects of the case, the State Government, in exercise of powers conferred under Section 12 (5) of the Industrial Disputes Act do not consider it a fit matter for reference to adjudication."

6. The petitioner has stated that thereafter it was surprised to find a notification dated 16th May, 1967 issued by the Government of Rajasthan, in which it was alleged that an industrial dispute existed between the petitioner and Sri Dhingra and that in exercise of the powers conferred under Section 10 (1) (d) of the Act, the Government referred the alleged industrial dispute for the adjudication of the Tribunal. The notification reads as under:-

> "whereas an industrial dispute specified below exists between M/s. Good Year India Limited and their workman Sri A. A. Dhingra : Whereas on consideration, the State Government is satisfied that there is a case for reference to the Industrial Tribunal : Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947), the State Government does hereby refer the above said dispute for adjudication to the Industrial Tribunal, Rajasthan, Jaipur, duly constituted by the State Government under the Industrial Disputes Act, 1947 (Act No. XIV of 1947).

DISPUTE

> "Whether termination of the services of Sri A. A. Dhingra, an employee of M/s. Goodyear India Limited, Rajasthan Depot, Mirza Ismail Road, Jaipur, by the District Manager, Goodyear India Limited, Delhi, is valid, and justified? And to what relief, Sri A. A. Dhingra is entitled?"

7. The petitioner's case is chat after receiving the order dated 18th April, 1967 from the Government of Rajasthan stating that it did not consider Sri Dhingra's case fit for reference for adjudication, the petitioner believed that the said case had been dropped. After passing the said order dated 18th April, 1967, no intimation was sent to the petitioner that the case was being reopened nor was there any change of circumstance after 18th April, 1967. The petitioner has alleged that the order of reference dated 16th May, 1957 was made in violation of the principles of natural justice. The order dated 16th May, 1967 does not give any reasons and is inconsistent with the reasoned order dated 18-4-67. The petitioner has prayed that the order dated 16th May 1967 may be quashed as it is illegal, without or in excess of the jurisdiction of the Government, arbitrary and capricious. The petitioner has also prayed that the respondents be restrained from taking any steps pursuant to the said order of reference.

8. No appearance has been given on behalf of the Tribunal, Conciliation Officer and the State of Rajasthan, respondents Nos. 1 to 3. The writ petition has been contested by Sri A.A. Dhingra, respondent No. 4. Sri Dhingra has stated that his duties were essentially of a clerical nature and that he was, a workman within the meaning of Section 2 (s) of the Act. He has admitted that after the termination of his services by the petitioner, he moved the Conciliation Officer for starting conciliation proceedings. The Conciliation Officer took necessary proceedings and submitted failure report to the Government on 3rd March, 1967. The State Government had not called upon him to make his submissions before issuing the order dated 18th April, 1967. When he got the order dated 18-4-67 from the Government, he made a representation maintaining that he was a workman and that the Government had erroneously refused to make a reference on the assumption that he was not a workman. He has maintained that the Government was well within its powers to make a reference of the dispute to the Tribunal under Section 10 (1) of the Act, irrespective of the fact that it had on an earlier occasion refused to make a reference while considering the failure, report under Section 12 (5). According to the respondent No. 4, the Government has properly carried out the statutory duty cast upon it. He has prayed that the writ petition be dismissed.

9. The bone of contention between the parties was that while the petitioner contended that Sri Dhingra was not a workman within the meaning of Section 2 (s) of the Act, and, therefore, no proceedings could be taken under it, Sri Dhingra contended that he was a workman within the meaning of the Act and that his case should be decided under the provisions of the Act. In all fairness, learned counsel for the petitioner has not raised the question before us whether Sri Dhingra is a workman within the definition of Section 2 (s) of the Act. He has submitted that if the reference by the Government to the Tribunal is otherwise held to be valid, the question whether Sri Dhingra is a workman or not, being a question of fact, would have to be decided by the Tribunal. That being so, what we are called upon to decide is the validity of reference dated 16-5-67 by the Government to the Tribunal. Learned counsel for the petitioner has assailed the reference on the following four grounds :

> (1) The Government having made the order dated 18-4-67 under Section 12 (5), its powers under section 10 of the Act were exhausted and it had no power to make the order dated 16-5-67 superseding the order dated 18-4-67.

(2) By the order dated 16-5-67, the Government by implication, reviewed its order dated 18-4-67. The order dated 18-4-67 gave reasons in support of it. No reasons are mentioned in the order dated 16-5-67. The Government could not change the order dated 18-4-67 without giving reasons for doing so.
(3) The order dated 16-5-67 was passed in violation of the principles of natural justice as no intimation was given to the petitioner that the order dated 18-4-67 was being reviewed.
(4) No industrial dispute was raised by Sri Dhingra with the petitioner.

10. Learned counsel for respondent No. 4 has in reply stated that the order of reference made by the Government under Section 10 (1) (d) of the Act was only an administrative act and that refusal by it to refer it to the Tribunal earlier did not affect a subsequent reference of the same dispute for adjudication. As regards point No. 2, it has been submitted that no reasons were necessary to be given by the Government in making a reference under Section 10 of the Act. If the Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, make a reference. In the order dated 16-5-67, the Government has clearly stated that it is of the opinion that an Industrial dispute exists requiring it to be referred to the Tribunal for adjudication, which, according to the contesting respondent, met the requirements of Section 10 of the Act. On the third and fourth grounds, Sri Dhingra s stand is that there was no violation of the principles of natural justice and that an industrial dispute had unmistakably been raised by him with the petitioner.

11. We proceed to decide the points raised by learned counsel for the petitioner in seriatim:

12. Point No. 1 : Section 10 (1) (d) and Section 12 (1), (4) and (5), which are material for our purposes read as below :-

Section 10 (1): "Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at any time, by order in writing,
(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication : Section 12 (1) : Where any industrial dispute exists or is apprehended, the conciliation officer may, or

where the dispute relates to a public utility service and a notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore."

12-A. Section 12 (5) of the Act provides that if, on a consideration of the report referred to in sub-section (4) of Section 12, the appropriate Government is satisfied that there is a case for reference to the Board, Labor Court, Tribunal or National Tribunal, it may make such a reference. It further provides that where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore. Section 12 (5) occurs in Chapter IV of the Act dealing with the Procedure, Powers and Duties of the authorities under the Act. Section 12 (5) undoubtedly confers power on the appropriate Government to act in the manner specified by it. If the appropriate Government comes to the conclusion that the case for reference has been made out, such a reference can be made under Section 10 (1).

13. The submission on behalf of the petitioner is that once an order under Section 12 (5) has been made by the Government refusing to refer the matter to the Tribunal for adjudicatipn, it could not make an order of reference under Section 10 (1) of the Act. For this proposition, reliance has been placed on a single Bench decision of the Punjab High Court in *Gondhara Transport Co. (Pvt.) Ltd. v. State of Punjab,* [1] In that case, the Punjab Government issued the notification dated March 1, 1962 under Section 10 (1) of the Act purporting to make a reference of the two industrial disputes to the Labor Court, Rohtak in direct reversal of the earlier order dated July 20, 1961 stating that the Government did not consider them as fit cases for adjudication. The High

Court held that the impugned reference of the dispute to the Labor Court in reversal of the earlier order of the Government dated July 20, 1961 is not authorized by any provision of law and is not valid as the power of the State Government under Section 10 (1) of the Act in relation to the said dispute had been exhausted after the issue of letter dated 20th July, 1961. The relevant observations are contained in paragraph No. 21 and read as below :

> "Considering the scheme, objects and purposes of the relevant provisions of the Act as a whole it appears to be clear that words "at any time" in Section 10 (1) of the Act refer to a period which commences with the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference to a Labour Court or Tribunal and which period terminates with an order of the appropriate Government either making a reference or declining to make it for any valid reason. Once the Government has arrived at and given out its decision one way or the other, Section 10 (1) of the Act ceases to exist for that particular dispute or demand and with such a decision of the Government the words "at any time" contained in Section 10 (1) of the Act also cease to operate."

14. It is well settled that in making a reference under Section 10 (1) of the Act, the Government is doing an administrative act; it is neither a judicial nor a quasi judicial act. This position is accepted by learned counsel for the petitioner. In this connection, it would be sufficient to refer to the following observations of the Supreme Court in the *State of Madras v. C. P. Sarathy,* [2] "But, it 'must be remembered that in making a reference under Section 10 (1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court

to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

15. A reference under Section 10 (1) of the Act is an administrative act. Such an order, being an administrative order, can it be said that there is a bar to the appropriate Government to give a different decision ? Cases may arise where it may be open to the Government to give a different decision on grounds of expediency or if it is found that its earlier order lacked proper consideration of all material facts or is vitiated by some error requiring further consideration of the matter. In the single bench decision of the Punjab High Court referred to above, it has been held that the order of the State Government refusing to make a reference, could not be reversed by holding that the dispute may be referred to the Labor Court. This view does not, with respect, seem to us to be well founded. Also, the view taken in that case is opposed to the view taken by the other High Courts as would be shown presently.

16. Learned counsel for the petitioner has also placed reliance on the *State of Bihar v. D. N. Ganguly,* [3] He has submitted that though that case has no direct bearing on the point involved in the present case, it lends support to it. In that case, it has been held that the Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made under Section 10 (1) of the Act. Nor can such power be claimed by implication on the strength of Section 21 of the General Clauses Act. The rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10 (1) of the Act. Once an order in writing is made by the appropriate Government, referring an industrial dispute to the Tribunal for adjudication under Section 10 (1) of the Act, proceedings before the Tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the Tribunal becomes enforceable under Section 17-A. After the dispute is referred to the Tribunal, during the continuance of the reference proceedings, it is the Tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it. Except for cases falling under Section 10 (5) of the Act, the appropriate Government stands outside the reference proceedings, which are under the control and jurisdiction of the Tribunal itself.

17. In the present case, the question of cancelling or superseding the reference made

by the Government on 16-5-67 under Section 10 (1) of the Act is not involved and, therefore, that case has no direct application to the facts of the present case. Let us see whether it lends support to the case of the petitioner in any way. The case lays down that once an order in writing is made by the appropriate Government referring an industrial dispute to the Tribunal for adjudication under Section 10 (1), the Tribunal is seized of the dispute and the Government stands outside the reference proceedings, which are under the control and jurisdiction of the tribunal. To say that when the Government cannot cancel or supersede the order of reference made under Section 10 (1), it cannot also cancel or supersede the order made, under Section 12 (5) refusing to make a reference is not correct. After making a reference under Section 10 (1) of the Act, the jurisdiction and control over the dispute vests in the Tribunal and the appropriate Government stands outside the reference proceedings whereas after making an order under Section 12 (5) of the Act refusing to refer the matter to the Tribunal, the Government does not get divested of its power to reconsider the matter. It does not get functus officio and there is no bar to its reconsidering the matter and in coming to a finding that reference be made to the Tribunal. The decision AIR 1958 SC 1018 is thus of no help to the petitioner.

18. I may now refer to the decisions cited by learned counsel for respondent No. 4 which have taken a contrary view.

19. In *Panipat Woollen and General Mills Co. Ltd. v. Industrial Tribunal, Punjab,* [4] it has been observed :

The first point that has been raised by the learned counsel for the petitioners relates to a legal issue, namely, whether a dispute which the Government had earlier refused to refer, could be referred for adjudication">. The tribunal has stated that the management led no evidence to support this contention nor did its representative even advert to the issue during the course of arguments before the tribunal. As this contention was not pressed before the tribunal, no question of examining it in these proceedings arises. Even otherwise there can be no doubt that the order of reference under Section 10 (1) is an administrative act of the Government. If there is an industrial dispute, the factual existence of which could not really be in dispute, a fresh determination by the Government of the question of the expediency of making a reference does not amount to a review of a question judicially determined previously and, therefore, a prior order of the Government does not affect the jurisdiction of the Government to exercise the statutory power under Section 10 (1) (c) of the Industrial

Disputes Act (vide *Ram Vilas Service, Ltd. (Kumbakonam Branch) v. State of Madras*[5]

20. In *Rawalpindi Victory Transport Co. (Pvt.) Ltd. v. State of Punjab,* [6] it has been held that aneexure H would show that the Government had not specifically mentioned that they were not prepared to make a reference to the labor Court, as provided in Section 10 (1) of the Act and that even if this annexure is construed to be such a refusal, the Government could review its previous decision and make a reference to the Labour Court.

21. In *Gurumurthy v. K. Ramulu* [7] the Government of Madras had declined to make a reference of a labour dispute. The Government of Andhra, its successor, after consideration of the subsequent events, came to a conclusion that there was a dispute, which must be referred to the decision of the tribunal and accordingly made the reference under Section 10 (1). The relevant observations read :

> "The fact that the Government of Madras declined to make a reference does not invalidate the order of reference made by the Government of Andhra. The order passed by the Government of Madras is an administrative order and is neither a judicial nor a quasi-judicial order. It was open to the Government of Andhra to take into account the subsequent happenings and circumstances and in the event of their being satisfied that there was a dispute, to make a reference under Section 10 (1), and that is what the Government of Andhra have done.
> The further contention that no reference can be made under Section 10 (1) without following the procedure laid down in Section 12 (5) of the Act is unsustainable. Under Section 10 (1) the Government can make a reference if they are of opinion that an industrial dispute exists or is apprehended. The jurisdiction of the Government to make a reference under Section 10 (1) is independent of the procedure laid down in Section 12 (5)."

22. In *Radhakrishna Mills (Pollachi) Ltd. v. State of Madras,* [8] it has been held that a decision under Section 12 (5) of the Act is an administrative act and not a judicial or a quasi-judicial adjudication. Such a decision has not been invested with any statutory finality by any provision of the Act. The right of the Government, very often it is a duty, is not exhausted by the exercise of the power vested in it by Section 12 (5) of the Act. It could re-examine the question of expediency afresh.

23. In AIR 1956 Madras 115 : (1956) 1 Lab LJ 498 it has been held that if there was an industrial dispute, the factual existence of which could not really be in dispute a determination afresh by the Government of the question of the expediency of referring such a dispute for adjudication under Section 10 (1) (c) of the Act did not amount to a review of any question judicially determined previously, and that a prior order of the Government under Section 12 (5), which refused to refer for adjudication a given dispute, did not affect the jurisdiction of the Government to exercise the statutory power conferred upon it by Section 10 (1) (c) of the Act on any subsequent occasion.

24. The contention of the learned counsel for the petitioner, that the order of the Government dated 27-8-1953 under Section 12 (5) barred the exercise of the jurisdiction conferred on the Government by Section 10 (1) (c) of the Act, which it exercised on 13-7-1954 was negatived.

25. In *Vasudeva Rao v. State of Mysore,* [9] it has been observed that it is well settled that an order of the Government making a reference is an administrative act and not a quasi-judicial one, and that Government is the sole judge in regard to the factual existence of an industrial dispute and of the expediency of making a reference. It has further been observed that it is hardly open to doubt that, as the power under Section 10 (1) has been conferred upon Government in the interests of industrial peace, the amplitude of the power cannot be curtailed by the importation of other principles unless there is any warrant for them in the statute itself and that even if at one stage Government had come to the conclusion that no reference is called for in the interests of industrial peace, it may re-examine the matter, whether in the light of fresh material or otherwise, and make a reference if it comes to the conclusion that a reference is justified, in the interest of industrial peace.

26. In *L. H. Sugar Factories and Oil Mills (Pvt.), Ltd. Pilibhit v. State of Uttar Pradesh,* [10] the observations are :-

> "One can visualize a situation where Government first decides not to refer a dispute for adjudication by the industrial tribunal but subsequently on receiving more reliable reports on the gravity of the situation in the locality, it decides to make a reference .....in my opinion, Government can always review its previous decision and make a reference provided it acts *bona fide* and within a reasonable time and there is no statutory bar against such review."

27. In *Champion Cycle Industries v. State of Uttar Pradesh,* [11] it has been observed :

> "If it can refer an industrial dispute today even though it did not refer it yesterday it can refer it today even though it deliberately refused to refer it yesterday; its saying yesterday that it would not refer it does not bar its referring it today. Its refusal yesterday to refer it does not amount to its deciding anything which may operate as res judicata or as estoppel. The State Government, therefore, could refer the industrial dispute to the Labour Court in spite of its having refused to do so on a previous day."

28. In *Khadi Gramodyog Bhavan, New Delhi, v. Delhi Administration,* [12] it has been held that even if at one stage the Government had come to the conclusion that no reference was called for, it may re-examine the matter whether in the light of fresh material or otherwise, and make a reference if it came to the conclusion that a reference is justified, in the interest of industrial peace.

29. Learned counsel for the petitioner has submitted that it was not necessary in (1962) 1 Lab LJ 555 (Punj) to decide whether a dispute which the Government had earlier refused to refer could be referred for adjudication as it was not pressed before the tribunal. In (1964) 1 Lab LJ 644 (Punj) the Government had not specifically mentioned in its earlier order that it was not prepared to make a reference. It has, therefore, been urged on behalf of the petitioner that the observations in these cases were in the nature of obiter dicta. Even so, they are entitled to great respect as they appear to be considered expression of opinion on the question of law involved.

30. As regards the cases, namely. AIR 1958 Andhra Pradesh 276; (1963) 2 Lab LJ 717 (Mys) and (1961) 1 Lab LJ 688 (All) it has been urged that there was fresh material before the Government to revise its earlier decision, which was not there in the present case. It is true that in cases, AIR 1958 Andhra Pradesh 276 and (1961) 1 Lab LJ 688 : (AIR 1962 Allahabad 70) subsequent events were taken into consideration by the Government in revising its earlier decision, but it has been held that the order declining to make a reference is an administrative order and is neither a judicial nor a quasi judicial order and that being so, the Government could re-examine the question of expediency and make a reference under Section 10 (1) of the Act. In (1963) 2 Lab LJ 717 (Mys) it has been held that the earlier decision refusing to refer

the matter for adjudication could be re-examined in the light of fresh material or otherwise. According to this authority, re-examination of the matter was not solely dependent on fresh material. It was permissible otherwise also.

31. As regards the case, (1964) 1 Lab LJ 724 : (AIR 1964 Allahabad 328) it has been submitted that it was a case under Section 4-K of the Uttar Pradesh Industrial Disputes Act, which provision was analogous to Section 10 (1) of the Act, but there was no provision similar to Section 12 (5) of the Act in the said Uttar Pradesh Act, and, as such, the observations in this case carry no force. Even if the provision similar to Section 12 (5) had been there, it would have made no difference to the decision of the case.

32. With regard to (1968) 1 Lab DJ 79 (Delhi) it has been stated that the previous order was revised on the recommendation of the Labor Commissioner, which was a distinguishing feature. It is true that the earlier decision not to refer the dispute for adjudication was revised on the recommendation of the Labour Commissioner, but the principle that has been laid down is that a refusal by the Government earlier to refer a dispute can be revised by it. No distinguishing features have been pointed out in respect of cases AIR 1956 Madras 113 and AIR 1956 Madras 115.

33. Gondhara Transport Company's case, AIR 1966 Punjab 354 on which reliance has been placed on behalf of the petitioner has been noticed and dissented by the Delhi High Court in (1968) 1 Lab DJ 79 (Delhi) and, if we may say so, with respect, correctly.

34. Having carefully considered the matter, my view is that a decision under Section 12 (5) not to make a reference is an administrative act and not a judicial or quasi judicial adjudication and such a decision not having been invested with statutory finality by any provision of the Act, the Government can re-examine the question and make a reference under Section 10 (1) if it is of the opinion that an industrial dispute exists or is apprehended. The earlier decision by the Government not to make a reference does not operate as res judicata. The fact that the appropriate Government had refused to refer an industrial dispute for adjudication could not bar the Government from subsequently referring the same dispute for adjudication, provided the conditions mentioned in section 10 (1) are satisfied.

35. Point No. 2 :- It has been argued on behalf of the petitioner that the order dated 16-5-67 of the Government referring the dispute to the tribunal does not contain reasons, and, as such, it was not a proper order in the eye of law, Section 10 (1) of the Act states that when the State Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing refer the dispute to the appropriate labor court or tribunal. It is clear from the language of Section 10 that the power to refer the dispute to the tribunal rests with the appropriate Government and for making reference it may give reasons and may not do so. The satisfaction of the Government is the only condition precedent to the making of the order of reference. In the order dated 16-5-67, it has been clearly stated by the Government that it is satisfied that there is a case for reference to the tribunal. The order of reference meets the requirements of law.

36. It has been urged that reasons have been given in the order dated 18-4-67 refusing to make a reference, and, therefore, reasons should also have been given in the order dated 16-5-67 making a reference to the tribunal. This argument does not seem to have force in it. When a report from the Conciliation Officer is received on failure of conciliation under Section 12 (4), the State Government is required to consider it, and if, under sub-section (5) of that Section, it is satisfied that there is a case for reference, it may make it, but if, on the other hand, it makes no reference, it should record and communicate to the parties concerned its reasons therefore. In case the Government refuses to make a reference, it is imperative for it to record reasons and communicate them to the parties concerned. That is why reasons were recorded in the order dated 18-4-67 and communicated to the parties. No such reasons are required to be given in the order of reference to the tribunal. What is required in such an order is satisfaction of the Government that there is a case for reference to the tribunal. This being the position, no reasons were necessary to be recorded in the order of reference dated 16-5-67 and it was not bad on that account. 36-A. Point No. 3 :- It has been contended that the order dated 16-5-67 of the Government making the reference to the tribunal revising its earlier order dated 18-4-67 refusing to make a reference was made in violation of the principles of natural justice and, therefore, its validity could be challenged. After the order dated 18-4-67, Sri Dhingra made representation Ex. D. 1 dated 25-4-67 requesting the Government to reconsider the matter and refer the dispute for adjudication to meet the ends of justice. It has been argued on behalf of the petitioner that the representation dated 25-4-67 of Sri Dhingra amounted to a hearing to him by the Government. No opportunity was given to the petitioner to put its point

of view before the Government. Therefore, the order dated 16-5-67 was illegal and invalid, being against the principles of natural justice. On facts as well as in law, this argument does not seem to be sustainable.

37. It may be recalled that after his services were terminated, Sri Dhingra made a representation to the Conciliation Officer (Annexure B) for starting conciliation proceedings. On his representation, the Conciliation Officer started proceedings and made a failure report. The petitioner gave detailed representations to the conciliation officer during conciliation proceedings and after the submission of the failure report, to the Government challenging the report made by the conciliation officer. The Government on 18-4-67, did not consider it to be a fit case for reference to adjudication. Thereafter, Sri Dhingra requested the Government by his representation dated 25-4-67 to reconsider its decision. This representation contains no new material. In it, Sri Dhingra has reiterated that he is a workman within the meaning of the Act, which is the position he has taken from the very inception.

38. In this connection, reliance has been placed on behalf of the petitioner on *Rambhau Sakharam Nagre v. D. G. Tatke,* [13] In this case, the Government of the State of Bombay by a notification issued by them on the 19th April, 1955 fixed wages for workers in Bidi manufacturing concerns in certain areas at the rate of Rs. 2/2 per thousand bidis. By the various notifications, the manufacturers in certain areas were exempted, which (exemption) was extended from time to time till 3.1-12-1956. The exemption, however, was withdrawn or cancelled by the Government by notification dated 22nd August, 1956 effective from 1st September, 1956. On behalf of the bidi workers it was contended that consequent upon the withdrawal of the exemption, they became entitled to the wages at the rate of Rs. 2/2 per thousand bidis from 1st September 1956 to 31st December, 1956. The owners of the bidi manufacturing concerns, who were respondents contested this claim on the ground that, before withdrawing the exemption already granted, the State Government gave a hearing to the representative of the workers, but gave no opportunity to the employers to put their views before them, and, as such, the notification withdrawing the exemption was invalid. It has been observed :

> "Where there are two parties in a controversy, as in the present case where the parties are employers and the employees, a fair opportunity must always be given to both of them in correcting or contradicting any relevant statement

> prejudicial to their view. In the present case, it would appear that after the exemption from the application of the Act was granted by the State Government by its notifications, Mr. Nagre, a representative of the employees, met the authorities of the Government and discussed the matter with them. The Government thereafter gave no opportunity to the employers to put their views before them. It was impossible for the employers to know what might have been stated by Mr. Nagre to the State Government. It is not improbable that the statements made by Mr. Nagre to the State Government might have been prejudicial to the interests of the employers in which case it was but fair to give an opportunity to the employers to correct or contradict those statements..... As the notification withdrawing the exemption was issued arbitrarily by the State Government in this case, we must uphold the contention of Mr. Kotwal pressed before us on behalf of the employers, the owners of the bidi manufacturing concerns, that it was an illegal and invalid notification."

39. This case has no application to the facts of the present case inasmuch as it is not the case of the petitioner that Sri Dhingra met any authorities of the Government and discussed the matter with them. The representation dated 25-4-67 filed by Sri Dhingra did not amount to a hearing as it merely contained a request for reconsideration with no new material incorporated in it. In fact, new material there could be none in this case as the entire dispute centred round the petitioner's stand that Sri Dhingra was not a workman and Sri Dhingra's stand that he was a workman within the meaning of the Act. The respective point of view of the parties was fully before the Government when it made the order dated 18-4-67 and, thereafter, when it thought it expedient to reverse it by the notification dated 16-5-67 making a reference to the tribunal. The aforesaid Bombay case is clearly distinguishable from the facts of the present case.

40. I may now refer to some authorities holding that no hearing in such a case is necessary.

41. In *Nagalinga Nadar Sons, Firm v. Ambalapuzha Taluk Head Load Conveyance Workers Union, Alleppey,* [14] a similar question was raised, which was repelled in these words :-

> "Now I shall proceed to consider the fifth point raised before me viz., that the order of reference is invalid as in making it Government did not conform to the

> rules of natural justice. What was urged was that Government did not issue notice to the petitioners or hear them before referring the dispute to the Tribunal. I am not aware of any law or rule that even where any judicial function is not involved an authority should give notice or hear both sides to a controversy before it takes action sanctioned by law. As far as I understand the position it is a pure executive or administrative act of Government to refer an industrial dispute to a Tribunal appointed by them. In my view there is no substance in this contention."

42. Similarly, in AIR 1956 Madras 113 it has been held that failure to give notice of reference to the management does not vitiate the exercise of the statutory power vested in Section 10 (1).

43. In *B. N. Elias and Co. Private Ltd. v. G. P. Mukherjee,* [15] while holding that the Government is not bound to give notice to the parties or to hear them, it has been observed :

> "It is now well settled that the order of reference under Section 10 (1) of the Industrial Disputes Act is an administrative act and that the expediency of making a reference is a matter entirely for the Government to decide : see *State of Madras v. C. P. Sarathy,* [16] The Government is not bound to give notice to the parties or to hear them before making the order of reference."

44. In (1968) 1 Lab DJ 79 (Delhi) it has been held that where the Government refuses to refer the dispute, it is open to it to revise and such a revision can be made without notice to the parties.

45. The Government was not bound to give notice to the parties or to hear them before making the order of reference. There was no violation of the principles of natural justice in this case.

46. Point No. 4 :- It has been urged that no industrial dispute had been raised by the employee with the petitioner and, as such, the reference was not competent. This is not so. The employee's services were terminated by the petitioner on 16-12-66. Immediately thereafter, he moved an application before the Conciliation Officer

challenging the termination of his services and requesting for reinstatement. The petitioner opposed his reinstatement. It cannot, in the circumstances, be said that no industrial dispute had been raised by Sri Dhingra with the petitioner. Reliance has been placed on behalf of the petitioner on the decision of the Supreme Court in *Sindhu Resettlement Corporation v. Industrial Tribunal of Gujarat,* [17] In this case, the retrenched employee and the Union had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement. That being so, the reference made by the Government under Section 10 in respect of reinstatement was held by the Supreme Court to be not competent. It was held that the only reference, which the Government could have made had to be related to payment of retrenchment compensation. In the present case, the dispute is about wrongful termination of the employee's services and the demand is about reinstatement. The reference relates to it. The said Supreme Court decision is thus clearly inapplicable.

47. The decision of this point also goes against the petitioner.

48. For the aforesaid reasons, the writ petition fails and should be dismissed with costs.

Bhandari, J.

49. I agree with my learned brother. I however take this opportunity of making some observations on the various points raised by learned counsel for the petitioner.

50. The first point raised is that the State Government having refused to make a reference to the Industrial Tribunal on 18th April, 1967, had no power to make a reference on 16th May, 1967. The power to make a reference to the Industrial Tribunal is vested in the State Government under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). This power is of purely administrative nature. The exercise of this power depends entirely on the opinion of the Government and such opinion is subjective which cannot be challenged in a court of law. Reference may be made in this connection to the *State of Madras v. C. P. Sarathy,* [18] The argument, however, is that once this power has been exercised by refusing to make a reference, it cannot be exercised again by making a reference. It is urged that the expression "at any time" occurring in Section 10 (1) (d) means at one time or only once. This is not the literal meaning of the expression "at any time" nor this meaning

can be discerned in the context of Section 10 (1) of the Act. The words "at any time" only emphasize that there are no restrictions on the power of the appropriate government to refer the industrial dispute provided that it is of opinion that such dispute exists or is apprehended. There is no restriction or impediment for the appropriate government to form one opinion and then to form another opinion which may be altogether contrary to its first opinion nor can a court of law review the decision of the appropriate government to refer a dispute even though it has material on record that earlier that very Government had refused to make a reference. The decision of AIR 1966 Punjab 354 that the words "at any time" refer to a period which commences with the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference and terminates with an order of the appropriate government either making a reference or declining to make it does not appear, if I may say so with respect, to be correct. It is not necessary that there must be any regular proceedings before the appropriate government for making a reference nor does it seem proper to infer that there is any termination of the power to make a reference when the appropriate government declined to make it at one stage.

51. Learned counsel for the petitioner has urged that the Supreme Court in AIR 1958 SC 1018 has taken the view that the appropriate government has no power to cancel or supersede a reference made under Section 10 (1) of the Act and has further held that such power cannot be claimed by the appropriate government by implication under Section 21 of the General Clauses Act. It has been urged that the same principle should apply when the appropriate government has declined to make a reference at one stage and it should be held that the appropriate government had no power to cancel or supersede that order. In my humble opinion, there is an obvious fallacy in this argument. By making a reference the appropriate Government altogether divests itself with the subject-matter of the reference and sends the matter to a Tribunal constituted under the Act to be decided in accordance with law. After making the order of reference, the subject-matter of reference does not remain in the hands of the State Government. The reference proceedings go exclusively within the jurisdiction of the Tribunal. This has been pointed out by their Lordships of the Supreme Court in the State of Bihar's case, AIR 1958 SC 1018 (supra) in the following observations :

> "The scheme of the provisions in Chapters III and IV of the Act would thus appear to be to leave the reference proceedings exclusively within the jurisdiction of the tribunals constituted under the Act and to make the awards of

such tribunals binding between the parties, subject to the special powers conferred on the appropriate government under Sections 17A and 19. The appropriate government undoubtedly has the initiative in the matter. It is only where it makes an order in writing referring an industrial dispute to the adjudication of the tribunal that the reference proceedings can commence; but the scheme of the relevant provisions would prima facie seem to be inconsistent with any power in the appropriate government to cancel the reference made under Section 10 (1)."

The same cannot be said when the appropriate Government has refused to make a reference. The power to make a reference at any subsequent time remains in the appropriate government and unless there is an express prohibition in the exercise of that power, it cannot be said that that power is exhausted. This also follows if the provisions of section 21 of the General Clauses Act, 1897, are applied. Their Lordships of the Supreme Court in the Stale of Bihar, AIR 1958 SC 1018 (supra) did not lay down that section 21 will not apply even when the power to make a reference is still in the hands of the Government. To take a familiar example, a State Government may decline to sanction prosecution of a government servant at one time and may revise its opinion and sanction his prosecution later on. But once prosecution has been launched in a criminal court, it does not lie in the hands of the State Government to withdraw the case except under the provisions laid down in the Code of Criminal Procedure. The reason is that having sanctioned the prosecution, the matter, so far as the prosecution is concerned, has gone out of the hands of the State Government. But as long as it remains in the hands of the State Government, it can change its mind at any time.

52. Learned counsel has argued that whatever may be the position, when the order refusing to make a reference is made in a case in which section 12 of the Act has not been resorted to, but when a reference has been refused under sub-section (5) of Section 12, it is not possible for, the appropriate government to revise its order of refusal to make a reference. It is urged that under Section 12 (5) of the Act, the appropriate government has to record its reason for not making a reference after receiving a report from the conciliation officer and to communicate the said reasons to the parties concerned and it cannot be envisaged that the appropriate government should be granted the power of reversing its order for which reasons have been assigned and those reasons are communicated to the parties concerned. In this

connection it may be pointed out that power to make a reference is contained in Section 10 (1) of the Act and not in anything contained in Section 12 (5). That power cannot be said to be exhausted even when an order has been made refusing to make a reference under Section 12 (5) and reasons for not making a reference have been recorded and communicated to the parties concerned. Learned counsel has mainly relied for his contention on the following observations in AIR 1958 SC 1018 (supra) :

> "There is another consideration which is relevant in dealing with this question. Section 12 which deals with the duties of the conciliation officer provides in substance that the conciliation officer should try his best to bring about settlement between the parties. If no settlement is arrived at, the conciliation officer has to make a report to the appropriate government, as provided in sub-section (4) of Section 12. This report must contain a full statement of the relevant facts and circumstances and the reasons on account of which in the opinion of the officer the settlement could not be arrived at. Sub section (5) then lays down that if, on a consideration of the report, the appropriate government is satisfied that there is a case for reference to a board, labour Court, tribunal or national tribunal, it may make such a reference. Where the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. This provision imposes on the appropriate govt. an obligation to record its reasons for not making a reference after receiving a report from the conciliation officer and to communicate the said reasons to the parties concerned. It would show that when the efforts of the conciliation officer fail to settle a dispute, on receipt of conciliation officer's report by the appropriate government, the government would normally refer the dispute for adjudication; but if the government is not satisfied that a reference should be made, it is required to communicate its reasons for its decision to the parties concerned. If the appellant's argument is accepted, it would mean that even after the order is made by the appropriate government under Section 10 (1), the said government can cancel the said order without giving any reasons. This position is clearly inconsistent with the policy underlying the provisions of Section 12 (5) of the Act. In our opinion, if the legislature has intended to confer on the appropriate government the power to cancel, an order made under Section 10 (1), the legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said power."

The aforesaid observations have been made only to point out that while reasons are to be recorded and to be communicated to the parties concerned, when the appropriate government is following the procedure under Section 12 (5) and refusing to make a reference, it would be against the spirit of section 12 (5) to hold that the appropriate government would have the liberty to cancel the order of reference without giving any reasons under Section 10 (1). Cancelling of an order of reference is virtually refusing to make a reference for which reasons are to be assigned. Cancellation of an order of reference without assigning any reasons would be clearly inconsistent with the policy underlying Section 12 (5) and Section 12 (5) contemplates assigning reasons for making a reference. These observations cannot be construed as affording any help to the argument that even when a reference has been previously refused and reasons for such refusal were recorded and communicated to the parties concerned, the appropriate government cannot review this order and make a reference. The policy underlying the provisions of Section 12 (5) is that order of refusal to make a reference must be made after recording reasons therefor and such reasons must be communicated to the parties concerned. The policy may be that reference may not be refused on flimsy grounds or it may be that the parties concerned may on refusal by an appropriate government to make a reference take such steps that they think proper for settling their disputes. But making a reference does not in any way conflict with the policy that may be underlying the provisions of Section 12 (5) of the Act. The aforesaid observations rather impliedly convey that under Section 10 (1), recording of reasons is not necessary.

53. In my humble opinion, the view taken by the Punjab High Court in AIR 1966 Punjab 354 (Supra) is not correct. The other cases in which that view has not been accepted have been referred to in the judgment of my learned brother and I need not refer to them over again. In my humble opinion, the view taken in these cases is correct even though in some of the cases this view has been expressed only by way of obiter dicta.

54. It will be proper in my view to dispose of the third point raised by learned counsel for the petitioner at this stage. It has been urged that the order making the reference was passed in violation of the principle of natural justice as the order was passed after receiving the representation from the respondent No. 4, and no notice of this representation was given to the petitioner nor was any opportunity afforded to him to have his say on this representation. Apart from the facts of the instant case, the

broader question is whether the principles of natural justice are to be followed in a case like this.

55. I have already pointed out that making of a reference under Section 10 (1) is purely an administrative act. The Supreme Court has clearly said in AIR 1953 SC 53 (supra) that the court cannot canvass the order of reference closely to see if there is any material before the Government to support its conclusion as if it was a judicial or quasi-judicial determination. This being the position, the court is equally incompetent to see whether any principles of natural justice have been followed or not in making the order of reference. It has been stressed that by making a reference the rights of the petitioner are seriously jeopardised as a new liability may be imposed on him to keep the respondent No. 4 in employment in case the industrial tribunal directs him to do so under the provisions of the Act. It is contended that under the general law, by illegally terminating the services of an employee, the employer incurs the liability to compensate the employee but he is under no obligation to keep him under employment but the Act casts on the employer the liability to keep even an undesirable employee in employment if such is the decision of the industrial tribunal. It is urged that order of such a nature when it is passed against the employer in supersession of the earlier order refusing to make a reference must be passed after notice to the employer and after giving an opportunity to have his say on the representation made by the employee.

56. Learned counsel for the petitioner has relied on the decision of the House of Lords in the *Board of Education v. Rice,* [19] and on the decision of the Bombay High Court in AIR 1959 Bombay 538.

57. Before I take these cases into consideration, I may make some general observations.

58. The circumstances under which a writ of Certiorari may be issued are laid down in the following passage of Lord Atkin, L. J. in *Rex v. Electricity Commissioner; Ex parte London Electricity Joint Committee Co.,* [20]

> ".....the operation of the writs of prohibition and certiorari has extended to control the proceedings of bodies which do not claim to be and would not be recognized 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."

Lord Reid in a recent judgment of the House of Lords in *Ridge v. Baldwin,* [21] has explained that the judicial element may be inferred from the nature of the power conferred on an authority. This view must be taken to be approved by the Supreme Court in *Associated Cement Companies Ltd. v. P. N. Sharma,*[22] where it has been observed that.

> "In dealing with questions as to whether any impugned orders could be revised under Article 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance."

Now in a case in which administrative authority is to decide a dispute in a quasi-judicial manner, the principles of natural justice may be applied. The right of hearing is a rule of natural justice. About this rule Wade has observed in Administrative Law, 1961 Edition at page 142 that ".....the courts took their stand several centuries ago on the broad principles that bodies entrusted with legal power could not validly exercise it without first hearing the person who was going to suffer. This principle was applied very widely to administrative as well as to judicial acts, and to the acts of individual ministers and officials as well as to the acts of collective bodies such as justices and committees. It extended into almost every sphere of administration until, not many years ago, an unexpected reaction set in. The hypothesis, on which the courts built up their jurisdiction was that the duty to give every victim a fair hearing was just as much a canon of good administration as of good legal procedure. If the court cannot control administrative discretion within its proper sphere, it can at least see that the discretion is not exercised without consideration of both sides of the case. Nothing is more likely to conduce to just and right decisions than the habit of first giving a hearing to any affected party. All power needs to be so exercised, regardless of whether it is judicial or administrative. In enforcing this principle, therefore, the courts have found an important piece of common ground on which to base both legal and administrative justice.' It can be very well visualized that in a country not covered by Constitution the courts in order to safeguard the rights of parties rightly inferred that even an administrative tribunal should decide their rights following the principles of natural

justice. But nevertheless the case must be such in which either from the constitution of the authority or the nature of the dispute or from the statutory provision under which that authority is exercising the jurisdiction, it may be inferred that the case is to be decided in a quasi-judicial manner. Before saying that an administrative authority has violated the principles of natural justice, it must be held that the authority was duty-bound to adopt judicial approach.

59. Now I take into consideration the decision of the House of Lords relied on by learned counsel for the petitioner. The following observations in that case were relied on :

> "Comparatively recent statutes have extended if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; out sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything.....They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.....The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine then there is a remedy by mandamus and certiorari."

It may be noted that in that case, Lord Loreburn had expressed the view that the Board was in the nature of arbitral tribunal and was to act judicially. Lord Haldane approved these observations of Lord Loreburn in *Local Government Board v. Ablidge,* [23] It was observed that in deciding the appeal the local government or the Board must act judicially. They must deal with the questions referred to them without bias and they must give to each of the parties the opportunity of adequately representing the case. Those observations of Lord Loreburn cannot be of any assistance to the petitioner

unless it is held that the State Government was bound to act in quasi-judicial manner in referring the dispute to the industrial tribunal; but it is conceded that this is not so.

60. The Bombay High Court in Rambhau Sakharam Nagre's case (supra) has relied on that aforesaid observations of Lord Loreburn for taking the view that even when an authority is exercising purely administrative power, its action can be quashed on the ground that it was arbitrary as it heard one of the parties affected while denied the right of hearing to the other. In my humble opinion, administrative act which is based on a policy may appear to be arbitrary to some minds but this does not mean that it is illegal. The very foundation for applying the rules of natural justice is that the authority must be bound to adopt judicial approach to the question before it. If this latter element is lacking, the act of such authority could not be illegal simply because one or the other party whose interests are affected have approached and had put its case before it behind the back of the other. It may not be proper to grant hearing to one party behind the back of the other: but, strictly speaking, the order passed by the authority is not illegal. I may draw support for this view on the following observations of their Lordships of the Supreme Court in *Lala Sri Bhagwan v. Ram Chand,* [24]

> "When a legislative enactment confers jurisdiction and power on any authority or body to deal with the rights of citizens, it often becomes necessary to enquire whether the said authority or body is required to act judicially or quasi-judicially in deciding question entrusted to it by the statute. It sometimes also becomes necessary to consider whether such an authority or body is a tribunal or not. It is well known that even administrative bodies or authorities which are authorized to deal with matters within their jurisdiction in an administrative manner, are required to reach their decisions fairly and objectively; but in reaching their decisions, they would be justified in taking into account considerations of policy. Even so, administrative bodies may, in acting fairly and objectively, follow the principles of natural justice; but that does not make the administrative bodies, tribunals and does not impose on them an obligation to follow the principles of natural justice."

In my humble opinion, the decision of the Bombay High Court is not correct.

61. This being the position, the order of the State Government refusing to make a reference cannot be quashed even if any hearing was not granted to the petitioner after

receiving the representation of respondent No. 4. Apart from this, as pointed out by my learned brother, there was nothing more in the representation made by respondent No. 4 except that a number of authorities were cited to show that the question whether respondent No. 4 was working or not should be better left to be decided by the Industrial Tribunal.

62. Now I take up point No. 2. The contention of learned counsel for the petitioner is that the Government could not make an order of reference without giving reasons for the same. In my humble opinion, this contention must be rejected for the reasons already given by me. I may further add that even a body which is required to act in a quasi-judicial manner need not give reasons for arriving at a decision. In this connection I may refer to the following passage contained in Judicial Review of Administrative Action by S. A. de Smith at page 109 :

> "The rules of natural justice are not rigid norms of unchanging content. Each of the two main rules embraces a number of sub-rules which may vary in their application according to the context. But it is clear that natural justice does not require that administrative adjudication be conducted in public or that reasons be given for decisions."

63. Now I take up point No. 4. The contention of learned counsel for the petitioner is that before the respondent No. 4 went to the Regional Assistant Labour Commissioner and Conciliation Officer, he had not raised any dispute with the petitioner inasmuch as he had not made any demand from the petitioner for re-instatement. This argument is not raised in the writ petition and we cannot permit it to be raised at the stage of arguments as it involves a question of fact. Moreover, this argument has no force so far as the making of reference is concerned because by the time the reference was made by the State Government on 16th May, 1967, the respondent had clearly raised a dispute with the petitioner before the Conciliation Officer for his reinstatement, and the State Government was referring this dispute to the Industrial Tribunal.

64. The result of the aforesaid discussion is that the reference made by the State Government to the Industrial Tribunal by its order dated 16th May, 1967, is not bad and cannot be quashed.

65. BY THE COURT : The writ petition is dismissed with costs.

Petition dismissed.

Cases Referred.

1. AIR 1966 Pun 354
2. AIR 1953 SC 53: (1953) 1 Lab LJ 174
3. AIR 1958 SC 1018
4. (1962) 1 Lab LJ 555 (Punj)
5. (1956) 1 Lab LJ 498: (AIR 1956 Madras 115)
6. (1964) 1 Lab LJ 644
7. AIR 1958 And Pra 276
8. AIR 1956 Mad 113
9. (1963) 2 Lab LJ 717 (Mys)
10. (1961) 1 Lab LJ 688: (AIR 1962 All 70)
11. (1964) 1 Lab LJ 724: (AIR 1964 All 328)
12. (1968) 1 Lab DJ 79 (Del)
13. AIR 1959 Bom 538
14. AIR 1951 Trav Co. 203
15. AIR 1959 Cal 339
16. 1953 SCR 334 at pp. 346-347: (AIR 1953 SC 53 at p. 57)
17. AIR 1968 SC 529
18. AIR 1953 SC 53
19. 1911 AC 179
20. (1924) 1 KB 171
21. 1964 AC 40
22. AIR 1965 SC 1595
23. 1915 AC 120.
24. AIR 1965 SC 1767