MISCELLANEOUS CIVIL

Before Muni Lal Verma, J.

THE MANAGEMENT OF FERTILIZER CORPORATION OF INDIA, LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS.—*Respondents.*

Civil Writ No. 3949 of 1973

& Civil Misc. 7172 of 1973

March 30, 1974.

Industrial Disputes Act (XIV of 1947)—Sections 2(b) 10 and 17—Reference of an industrial dispute to the Tribunal—Order of the Tribunal terminating the proceedings on technical ground—Whether an "award"—Publication of the order even if not an award—Whether mandatory—Individual industrial dispute not finally determined by the Tribunal—Further reference of the dispute to the Tribunal by the State Government—Whether valid.

Held, that from the definition of "award" given in section 2(b) of Industrial Disputes Act, 1947, it is clear that it means the adjudication of an industrial dispute on merits. The final determination of any question relating to the individual dispute may also be an award. But, a mere termination of proceedings arising out of the reference, when it does not resolve any matter in dispute does not amount to "award". The word "determination" in the definition of 'award' cannot be considered as synonymous with 'termination'. The object of the decision which can be termed as award is to resolve the differences or any one of the same between the parties. If the dispute referred to the Tribunal for decision remains unresolved as before, and has to be determined in future, the termination of proceedings by the Tribunal in any other manner would not be 'award' within the definition.

Held, that Section 17(1) of the Act makes it obligatory on the State Government to publish the award and the time limit fixed therein shows that the publication of the award ought not to be held up. Ordinarily, an award comes into operation from the time stated in Section 17-A of the Act, namely, on the expiry of 30 days from the date of its publication, and then it becomes final,—*vide* sub-section (2) of Section 17 of the Act. It is, however, the award that requires publication and not an order or decision of the Tribunal, which may terminate proceedings but has not the status of award. Where the decision of the Tribunal is not an award, its publication is not mandatory.

Held, that the object of Section 2-A of the Act is to give an individual dispute relating to discharge, dismissal or termination of

services of an individual workman, the status of an industrial dispute and, therefore, an individual workman can raise an industrial dispute and approach the State Government for making reference for its adjudication to the Tribunal. Where an individual industrial dispute is not finally determined by the Tribunal on merits, a further reference of the dispute to the Tribunal by the State Government is competent, valid and is not an act of futility.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Mandamus, *Certiorari, Prohibition or any other appropriate writ, order or direction be issued directing the Respondent No. 1 to publish the award as forwarded to the Govment under endorsement No. 905 of the Respondent No. 4, dated 25th July,* 1972, in *accordance Section 17 of the Industrial Disputes Act and quashing the reference of the Government dated 8th October,* 1973, *and also prohibiting the Industrial Tribunal, Respondent No. 5 from proceeding with the adjudication of the alleged industrial dispute in terms of the terms of reference made by the Respondents 1 and 2, dated 8th October,* 1973.

Civil Misc. No. 7172 of 1973.

Application under Section 151 *of Civil Procedure Code praying that this Hon'ble Court be pleased to grant stay of proceedings before the Respondent No. 5, that is the Industrial Tribunal, Punjab, Pending the final disposal of the petition.*

Dr. Anand Parkash, Advocate of Delhi, *for the petitioner.*

U. S. Sahni, Advocate, *for respondents Nos. 1 and 2.*

M. M. Singh Cheema, *respondent No. 3 in person.*

JUDGMENT.

VERMA, J.—The Management of the Fertilizer Corporation of India Ltd., Nangal Unit, Naya Nangal, has moved this petition under Article 226 of the Constitution for the writs to quash the order of reference, dated 8th October, 1973, made by Shri Hari Ram, Labour Commissioner, on behalf of the State of Punjab, to the Industrial Tribunal, Punjab, Chandigarh, (hereinafter referred to as the Tribunal) for adjudication of the dispute regarding the alleged termination of services of Shri M. M. Singh Cheema, Chargeman Chemist to direct the State Government to publish the award of the Tribunal given in reference No. 111 of 1971, and to prohibit the Tribunal from proceeding with reference No. 104 of 1973, on the grounds stated in the writ petition.

(2) The facts, which emerge out of the material on record and the arguments which were addressed at the bar, are that Shri Cheema was in the employment of the petitioner till 26th August, 1967, when his services came to close. According to the petitioner, he (Shri Cheema) abandoned the service, but according to Shri Cheema, his services were terminated illegally by the petitioner. Therefore, Shri Cheema, after an attempt for conciliation, etc., approached the State Government, as a result of which reference was made by the State Government to the Tribunal and the said reference was registered at No. 28 of 1969 (for convenience sake hereinafter to be referred to as the first reference). The said reference was decided on 3rd June, 1971. Dissatisfied with the said award, Shri Cheema served demand notice on the petitioner and when he could not obtain any relief from the petitioner, he approached the State Government, as a result of which the State Government made reference, which was registered at No. 111 of 1971 by the Tribunal. The said reference will hereinafter be referred to as the second reference. The said reference was decided by the Tribunal on July 25, 1972. The decision given by the Tribunal has, however, not been published so far. The State of Punjab then made another reference on 8th October, 1973, relating to the dispute between Shri Cheema and the petitioner to the Tribunal and the said reference was registered at No. 104 of 1973. Alleging that it was mandatory for the State of Punjab (respondent No. 1) to publish the award given by the Tribunal on July 25, 1972, in the second reference and it (the respondent No. 1) could not withhold it, and in view of the said award, the third reference made by respondent No. 1 on October 8, 1973, was without jurisdiction and void, the petitioner has prayed for the writs of *mandamus, certiorari* and prohibition for the reliefs; stated above. Shri B. N. Kapur; Personnel Manager-cum-Administrative Officer of the petitioner has filed affidavit in support of the allegations made in the writ petition. The petition has been resisted by Respondents 1, 2 and 3. They have not controverted the material facts, but pleaded, *inter alia*, that the decision in the second reference was not an award.

3. The facts, that Shri Cheema was employed by the petitioner and his name was removed from the rolls and three references were made by the State of Punjab, are not disputed. It is, however, pleaded that the name of Shri Cheema was not removed but his services had been terminated by the petitioner, and that the decision given by the Tribunal in the second reference did not constitute

award. Shri Cheema as well as Shri Hari Ram, Labour Commissioner, have filed affidavits by way of returns. I have heard the arguments and exmained the material on record.

4. It is not disputed that Shri Cheema's services came to close on 26th August, 1967, and three references, indicated above, had been made by the State of Punjab, out of which the first and the second references had been decided and the third reference is pending with the Tribunal.

5. Shri Anand Parkash, learned counsel for the petitioner, argued that the decision given by the Tribonal in the second reference was award and that it was mandatory on the part of the State of Punjab to publish it. He further maintained that even if it did not amount to an award, its publication was imperative. He added that the findings, recorded by the Tribunal on issue Nos. 2, 4, 5 and 6 in its decision, dated 25th July, 1972, in the second reference precluded the State of Punjab from making the third reference. In reply to the said contentions, it was urged by Shri U. S. Sahni, who appeared for Respondents 1 and 2, and also by Shri Cheema, that the decision given by the Tribunal in the second reference only terminated the proceedings and as it did not decide the question referred for determination, it did not constitute award and, as such, there was no necessity for its publication, and that the State of Punjab was not precluded from making the third reference. It is pertinent to note that issue Nos. 2, 4, 5 and 6 along with other four issues had been treated by the Tribunal as preliminary and it was decided by it under issue Nos. 5 and 6 that the second reference had not been made by the appropriate authority on behalf of the State of Punjab. It was found under issue No. 4 that the case of Shri Cheema could not be referred under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), and it was held under issue No. 2 that the award given in the first reference was operative and was binding upon the parties and ultimately the Tribunal found that the second reference was incompetent and invalid. It is, thus, clear that the Tribunal did not decide in the second reference the dispute, referred to, on merits. The stand taken up by Shri Anand Parkash is that even if the Tribunal did not decide the dispute in the second reference on merits its decision was still award within the meaning of section 2(b) of the Act because the finding recorded by the Tribunal on the preliminary issues were with respect to questions relating to the industrial dispute which

had been referred to it for decision and the same would bar, on general principle of *res judicata,* the decision of the matter or matters which have now been referred by the State of Punjab to the Tribunal in the third reference. So the points arising out of controversy, which require decision, are—(i) whether the decision in the second reference amounts to award; (ii) even if it is not award was it imperative for the State of Punjab to publish it and (iii) whether the decision of the second reference or the findings recorded by the Tribunal therein precluded the State of Punjab from making the third reference.

6. Award is defined in Clause (b) of section 2 of the Act as under :—

> " 'award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A."

It is, therefore, clear from the aforesaid definition of 'award' that it would primarily mean adjudication of the industrial dispute on merits, and, secondly, final determination of any question relating to the industrial dispute may also be award. But, mere termination of proceedings arising out of reference, by the Tribunal, especially when the same does not resolve any matter in dispute, would not amount to award. The word "determination" in the definition of 'award' cannot be considered as synonymous with 'termination'. The object of the decision which can be termed as award is to resolve the differences or any one of the same between the parties. If the dispute referred to the Tribunal for decision remains unresolved as before, and has to be determined in future, the termination of the proceedings by the Tribunal in any other manner would not be award within the definition, reproduced above. Similar view was taken in *Andhra Handloom Weavers' Co-opertive Society* v. *State of Andhra Pradesh and others* (1), and *Jadav Mavji and others* v. *Maharana Mills Ltd.,* (2). An order of a Tribunal disposing the proceedings arising out of a reference made to it by the State Government, after recording finding or findings on preliminary

(1) 1963 II L.L.J. 488.
(2) 1958 II L.L.J. 130.

issue or issues, without granting or refusing to grant all or any of the reliefs, would not constitute an award. Such view was also expressed in *Certain Tanneries in Dindigul* v. *Their Workmen* (3). The matter, which was the subject of industrial dispute, which had been referred to by the State Government to the Tribunal for decision in the second and third references, was worded thus :—

> "Whether termination of services of M. M. Singh Cheema, workman, is justified and in order ? If not, to what relief/ exact amount of compensation is he entitled ?"

Admittedly, the Tribunal while disposing the second reference did not decide the said dispute on merits. It had concluded the second reference with the following remarks :—

> "In view of the findings given in respect of preliminary issues No. 2, 4, 5 and 6 in favour of the respondent Corporation, it is held that the reference is incompetent and invalid."

7. It cannot be gainsaid that the Tribunal acquires jurisdiction to decide the industrial dispute from the reference made to it by the appropriate Government (the State Government in the case in hand),—*vide* section 10 of the Act. The power to make reference for adjudication of an industrial dispute can be delegated by the State Government to any officer or authority subordinate to it as may be specified in the notification,—*vide* section 39(b) of the Act. The second reference was made to the Tribunal to decide the industrial dispute, referred to above, by Shri Sada Nand, the then Labour Commissioner, on behalf of the State Government. The Tribunal, as indicated in para 5 above, found, while deciding preliminary issue No. 5 in the second reference, that powers of making reference on behalf of the State Government had not been properly and validly delegated to Shri Sada Nand, and held under preliminary issue No. 6 that he (Shri Sada Nand) was not competent to make the said (second) reference for adjudication of the dispute under section 2A of the Act. It would, thus, appear from the findings recorded on preliminary issues No. 5 and 6 that the Tribunal held that the second reference, made by Shri Sada Nand on behalf of the State Government, was invalid and incompetent for the reason that he had no authority or power to make it. In that view of the matter,

(3) 1955 II L.L.J. 171.

the effect of the said findings is that the second reference made by Shri Sada Nand was non-est, having been made without jurisdiction. When the second reference has been considered to be non-existent, it could not possibly grant any jurisdiction to the Tribunal to decide any matter relating to the dispute, much less the dispute referred to it for adjudication. As soon as the Tribunal recorded findings on preliminary issues No. 5 and 6 that the second reference was incompetent and invalid, having been made by the officer who had no jurisdiction to make it on behalf of the State Government, it divested itself of the jurisdiction to decide any other matter relating to the dispute, which had been referred to it for adjudication. In that view of the matter, the findings of the Tribunal, recorded on issues No. 2 and 4 or on any other preliminary issue, cannot survive for the obvious reason of having been recorded without jurisdiction. In view of the conclusion arrived at from the findings recorded on preliminary issues No. 5 and 6 by the Tribunal that the second reference was incompetent and invalid, it is difficult to resist the conclusion that the second reference was disposed of without decision of any question relating to the industrial dispute and as a matter of fact, the proceedings arising out of the second reference had terminated without there being any final determination of any question relating to the industrial dispute, which was subject of that reference. Therefore, in view of the discussion above, the decision of the second reference cannot be said to be 'award' within the definition of clause (b) of section 2 of the Act.

8. Relying on *State of Uttar Pradesh* v. *Workmen, Swadesh Cotton Mills, Co., Ltd., Kanpur and others* (4), 1973. Shri Anand Parkash, learned counsel for the petitioner, argued that the decision of the Tribunal on preliminary issue No. 4, that the dispute referred to it for adjudication was collective dispute under section 2(k) of the Act and was not individual dispute under section 2A, had the status of award. I have been unable to persuade myself to agree with him. When, as found above, the Tribunal lacked jurisdiction to adjudicate the dispute or any matter relating thereto for the reason that the second reference, made to it on behalf of the State, was incompetent and invalid, its (the Tribunal's) decision on any other matter, including the findings recorded on issues No. 4 and 2, are nullity, It has been ruled in *Municipal Committee, Patiala* v.

(4) 1973, Lab. I.C. 893.

The State of Punjab and others (5), that "since the reference was without jurisdiction and a nullity, all proceedings taken on its basis and in pursuance thereof are a nullity". In presence of the said authority, I am of the opinion that the decision of the Tribunal recorded on issue No. 4, that the dispute, which was subject of the second reference, was a dispute under section 2(k) and not under section 2A of the Act, is a nullity for want of jurisdiction and, as such, has to be ignored. It has been observed in *P. M. Murugappa Mudallar Rathina Mudallar and sons* v. *Raju Mudallar (P) and others* (6), that existence of an industrial dispute is a jurisdictional fact. When the Tribunal comes to the conclusion that the dispute referred to it for adjudication is not an industrial dispute, the matter comes to an end and the Tribunal cannot proceed further. Therefore, the finding of the Tribunal on issue No. 4 that the dispute referred for decision was not individual dispute, covered by section 2A, and was a collective dispute covered by section 2(k) of the Act, cannot, in my opinion, be taken as award as contemplated by clause (b) of section 2 of the Act.

Relying on the finding recorded by the Tribunal on issue No. 2, Shri Anand Parkash says that in view of the decision of the first reference, the third reference was invalid. Here too, I cannot agree with him. The reasons are two-fold. Firstly, in view of the conclusion arrived at in para 7 above that the Tribunal lacked jurisdiction to decide the matters after coming to a finding that the second reference was invalid and incompetent on account of having not been made by a competent officer on behalf of the State Government, its finding on issue No. 2, that the second reference was incompetent and invalid on account of the decision of the first reference, is a nullity. This view is supported by *Municipal Committee, Patiala's case* (5). (supra). Secondly, the first reference was also not decided on merits and it had been disposed of on account of technical defects. Therefore, the decision of the first reference too cannot be said to be award as contemplated by clause (b) of section 2 of the Act. So, on giving my careful consideration to all what was said by Shri Anand Parkash, I find that the decision of the second reference by the Tribunal is not award.

9. There can be no quarrel with the proposition that section 17(1) of the Act makes it obligatory on the State Government to publish

(5) 1969 Curr. L.J. 1,000.

(6) 1965 L.L.J. 489.

the award and the time limit fixed therein shows that the publication of the award ought not to be held up. Ordinarily, an award comes into operation from the time stated in section 17A of the Act, namely, on the expiry of 30 days from the date of its publication and then it becomes final,—*vide* sub-section (2) of section 17 of the Act. It is, however, the award that requires publication and not an order or decision of the Tribunal, which may terminate proceedings but has not the status of award. As discussed above, the decision of the second reference by the Tribunal is not award and, therefore, the State Government cannot be directed to publish it. Shri Anand Parkash, learned counsel, for the petitioner, has argued that even if his contention that the decision of the second reference constitutes award, is not accepted, the said decision should be published because it has been decided by the Tribunal under issue No. 2, that the second reference was not competent because of the decision of the first reference, which, according to the Tribunal, was award and was in operation, and the Tribunal decided under issue No. 4 that the dispute referred to by the State Government for adjudication was collective dispute falling under section 2(k) and not individual dispute covered by section 2A of the Act. Continuing his argument, he maintained that the said findings, recorded by the Tribunal on preliminary issues No. 2 and 4, operate as *res-judicata* and would bar the decision of the 3rd reference, and as such the making of the 3rd reference is nothing but an act of futility. The said arguments have not found favour with me. The reason is that when, as found above, the decision of the second reference is not award, the State Government cannot be called upon to publish it, irrespective of the importance or the value which is being given by Shri Anand Parkash to the findings recorded by the Tribunal on issues No. 2 and 4. Section 11, Civil Procedure Code, is not applicable as such to the industrial disputes, but I agree with Shri Anand Parkash that the principle underlying it which is based on sound public policy is of universal application and, therefore, the general principle of *res judicata* would be applicable to the decision of the Industrial Tribunals. But the difficulty which confronts in the acceptance of his argument that the findings recorded by the Tribunal on issues No. 2 and 4 in the second reference would bar the decision of the similar matters in the third reference, is that, as held above, on the finding of the Tribunal itself that the second reference was invalid because it had not been made by a competent or authorised person on behalf of the State Government, there was

no valid reference, it (the Tribunal) had no jurisdiction to decide the matters, which were subject of issues No. 2 and 4. Therefore, decision of issues No. 2 and 4 cannot be considered as findings, the same having been recorded without jurisdiction. As such, the same would not operate as bar for the decision of the similar matters in the third reference. Further, the plea of *res judicata* is available to the parties to the dispute, namely, the petitioner and Shri Cheema. The State Government is not party to the said dispute. Therefore, the plea of *res judicata* is not available to the petitioner against the State Government and it (the State Government) is not precluded from making the third reference. The petitioner may or may not raise the plea of *res judicata* if it is available to him and he is so advised by law in the third reference.

The main object of the Act is the settlement of disputes between the employer and its employees in the interest of industrial peace and the object of section 2A of the Act is to give an individual dispute relating to discharge, dismissal or termination of services of an individual workmen, the status of an industrial dispute. So, the resultant position by insertion of section 2A by the Industrial Disputes (Amendment) Act No. 35 of 1965 is, that an individual workman, whose services are terminated, can now raise an industrial dispute and approach the State Government for making reference for its adjudication to the Tribunal. Shri Cheema raised the said dispute and there had been no final adjudication of the same so far. The first reference relating to the collective dispute, which also included the dispute raised by Shri Cheema, was not decided on merits, but was disposed of on technical grounds. The second reference was again decided on the preliminary objection that the reference was incompetent and invalid. So, in the interest of final determination of the dispute, which has arisen between the petitioner and Shri Cheema respecting the termination or abandonment of his services, the making of the third reference by the State Government is justified and cannot be said to be an act of futility.

10. It, thus, follows from the discussion above that all the three points arising out of the controversy between the parties and referred to in para 5 above, are decided in the negative. So, this writ petition is bereft of any merit and fails.

(11) Consequently, I dismiss this writ petition and direct the petitioner to pay Rs. 100 as costs to Shri Cheema and to pay

similar amount as costs to Respondent 1. Civil Miscellaneous Application No. 7,172 of 1973 stands dismissed.

K. S. K.

APPELLATE CIVIL

Before R. S. Narula and Bal Raj Tuli, JJ.

M/S. KHADI ASHRAM, PANIPAT,—*Appellant.*

versus

THE WORKMEN OF M/S. KHADI ASHRAM, ETC.,—*Respondents.*

L.P.A. No. 636 of 1973.

April 2, 1974.

Industrial Disputes Act (XIV of 1947)—Section 2(a) (i) and 2(a) ((ii)—Khadi and Village Industries Commission Act (LXI of 1956)—Section 4—Societies Registration Act (XXI of 1860)—Section 20—Industry carried on by a registered society recognised as Khadi institution—Disputes between the workmen and the management of the society—"Appropriate Government" in respect of such disputes—Whether the State or the Central Government.

Held, that section 2(a) of Industrial Disputes Act, 1947 does not provide that the appropriate Government in relation to any industrial dispute concerning any industry carried on under the certificate issued by an institution or a legal person which legal person is working under the authority of the Central Government shall be the Central Government. When a society is recognised as Khadi institution under Khadi and Village Industries Commission Act, 1956, it does not mean that the industry carried on by the society is under the authority of the Central Government. No provision in this Act shows that the Central Government can in any manner control the business or working of the Society, nor does the Society require any authority from the Central Government to function. The Corporations and registered Societies are independent legal entities and run the industries for their own purpose. Even when the Central Government controls such corporations, their industries are worked under the authority of their own constitutions or charters and even if the Central Government owns the entire shares of a corporation, the appropriate Government in respect of such a corporation cannot be the Central Government. Moreover the word "authority" in section 2(a) of the Industrial Disputes Act, 1947