LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Chopra, J.

THE KARNAL-KAITHAL CO-OPERATIVE TRANSPORT SOCIETY, LTD., KARNAL,—*Appellant.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 22 of 1955

1958

April 18th

Industrial Disputes Act (XIV of 1947)—Section 10(1)(c)—Determination by the State Government as to the existence of an industrial dispute and its reference to the Industrial Tribunal—Whether can be interfered with by the High Court by a writ of Mandamus—Constitution of India (1950)—Article 226—Writ of Mandamus—Pre-requisites for its issue—Remedy by way of Mandamus—Whether curative or preventive—Ministerial Act—Definition of—When can be controlled by mandamus—Writ of Prohibition—Purpose of—Objection as to jurisdiction of the Tribunal—Whether should be raised before the Tribunal—Tribunal—Whether competent to decide such objection.

Held, as follows :—

(1) The Industrial Dispute Act, 1947, confers upon the State Government the power, and imposes upon it the duty, to decide for itself in the exercise of its own judgment and discretion whether an industrial dispute does or does not exist or whether such dispute should or should not be referred for adjudication to a tribunal. The duty imposed upon the State Government is not of a ministerial character but is one involving judgment and dicretion and it is for the said Government to decide whether an industrial dispute exists or is apprehended. If, therefore, it comes to a decision in regard to the existence or non-existence of a dispute this decision must be deemed to have been arrived at in a case where the law authorises it to exercise judgment or discretion and where the Legislature has vested it with jurisdiction. The decision may be wrong, but it cannot be said that by coming to a wrong decision the State Government has attempted to perform an act over which it had no jurisdiction. All reasonable presumptions must be drawn in support of the action of the State Government. The High Court will not interfere with such a decision of the State Government when it is neither mala fide nor arbitrary and is not ministerial in its character. Section 10 of the Statute confers no legal right on the petitioner and imposes no duty on the respondent.

(2) There are four pre-requisites essential to the issue of the writ of mandamus, viz, (1) whether the petitioner has a clear and specific legal right to the relief demanded by him; (2) Whether there is a duty imposed by law on the respondent; (3) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; and (4) whether the petitioner has any remedy, other than by way of mandamus, for the enforcement of the right which has been denied to him. Mandamus cannot issue when the right is doubtful, or not complete, or is a qualified one, or where it depends upon an issue of fact to be determined by the respondent. It cannot issue to determine academic questions or empty and barren technical rights.

(3) Remedy by way of *mandamus* is in no sense a curative or preventive remedy. Mandamus is a positive or remedial process, not a negative or preventive one. It is not the province of mandamus to prohibit the passing of an

order or to review one which has already been passed, or to undo an act which has already been performed, or to revise action which has already been taken, or to restrain or prevent an improper interference with the rights of petitioners. It is a coercive and not a corrective writ; it stimulates the lethargic into action; it commands performance not desistence. It cannot lie to restrain action and cannot compel the State Government to recall an order of reference which has already been made by it in exercise of the powers conferred by law. If a petitioner has a clear legal right to the performance of a particular duty, if he has no other specific legal remedy which is adequate to afford complete relief, and if there would be failure of justice if the aid of this Court is not extended, remedy by way of mandamus may be invoked.

(4) A ministerial act is one which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. If, therefore, a statute directs a public officer to perform an act in regard to which no discretion is committed to him then that act would be ministerial although depending upon a statute which requires in some degree a construction of its language by the officer concerned. The fact that it is necessary for an executive officer to read and to construe a statute in order to ascertain the precise duty which he is required to perform, would not preclude its coercion by a writ of mandamus so long as the duty is plainly prescribed and is equivalent to a positive command. If, however, the duty is not plainly prescribed or if the law confers discretion on the respondent to do or not to do a certain act as he may choose, the duty must be regarded as involving the exercise of judgment or discretion which cannot be controlled by mandamus even though the construction of the officer may be erroneous. This is particularly so when the statute by which the duty is imposed is couched in permissive terms.

(5) The writ of prohibition is designed primarily to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.

(6) The jurisdiction of every judicial or quasi-judicial tribunal is derived from and limited by the statute or other instrument by which it has been created and every judicial and quasi-judicial tribunal has power to determine the boundaries of its own jurisdiction. Indeed it has been said that every such tribunal should, of its own motion, consider the question of its jurisdiction over any matter brought before it even though it is not raised by the parties. The question of jurisdiction of a tribunal should be raised before the tribunal itself and decided by it in accordance with law for the High Court will decline to examine such question until it has been examined and pronounced upon by the tribunal itself.

George's Creek Coal and I.C. v. *Allegany County* (1), *Decatur* v. *Paulding* (2), *United States ex rel. Riverside Oil Co.* v. *Hitchcock* (3), *State of Madras* v. *C. P. Sarathy and another* (4), *Rex* v. *Bank of England* (5), In re *Nathan* (6), *In re Barlow* (7) and *Reg.* v. *Registrar of Joint Stock Companies* (8) referred to.

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court, against the Judgment dated the 17th March, 1955 of the Hon'ble Mr. Justice Kapur passed in Civil Writ No. 247 of 1954.

H. R. SODHI, for Appellant.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL and H. R. AGGARWAL, for Respondents.

JUDGMENT.

Bhandari, C. J.

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether it is within the competence of this Court to set aside an order passed by the State Government referring a certain dispute to an Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947.

(1) (1882) 59 Md. 255.
(2) 10 L. Ed. 559, 568.
(3) 190 U.S. 316
(4) 1953 S.C.R. 334, 346
(5) 2 Dang. 524 at 526
(6) 12 Q.B.D. 473
(7) 30 L.J.Q.B. 271
(8) 21 Q.B.D. 131, 135

The Karnal Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

The petitioners in this case are the Karnal-Kaithal Co-operative Transport Society, while the respondents are the District Motor Transport Workers Union.

Certain disputes which had arisen between the parties were settled on the 21st August, 1953, and the 31st October, 1953. Notwithstanding this settlement, the respondents gave to the petitioners a notice of strike under section 22(1) of the statute in which they announced that if their demands were not accepted before the 18th March, 1954, they would be compelled to go on strike and that the petitioners would be held responsible for any consequence which might ensue. The petitioners replied back to say that all the demands put forward by the respondents existed in one form or another during the dispute which had arisen between the parties, that they were considered and thrashed out on previous occasions, that the settlement arrived at between the parties was signed by both the parties and the Conciliation Officer, and that any strike during the subsistence of the settlement would be illegal under section 23 of the Act of 1947. The respondents were unable to concur in this line of reasoning and intimated their desire to proceed on strike on the 16th May, 1954. The petitioners repudiated this fresh notice on facts as well as on law and warned the respondents of the penal consequences which were likely to follow, if they proceeded on strike during the subsistence of the agreement. On the 17th June, 1954, while this acrimonious correspondence was going on between the parties, the State Government referred this dispute to the Second Industrial Tribunal at Amritsar under section 10(1)(c) of the Act of 1947. This case was later transferred to the Industrial Tribunal at Jullundur, and on the 15th July, 1954, the latter directed the parties to appear before it on the 21st July, 1954.

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

On the 20th July, 1954, the petitioners presented a petition under Article 226 of the Constitution in which they asked for two declarations, namely (1) that during the continuance and operation of conciliation settlement under the Act, of 1947, the State Government had no power of reference till the settlement had been terminated according to law; and (2) that the State Government had no power to transfer a proceeding pending before one Industrial Tribunal to another Industrial Tribunal. The learned Single Judge before whom this petition came up for consideration came to the conclusion that the statute confers wide powers on Government to refer industrial disputes to tribunals and that the question whether an industrial dispute does or does not exist is one for the decision of Government. In this view of the case the learned Judge dismissed the petition. The petitioners appeal.

The learned counsel for the petitioners contends that the order of the State Government referring the present dispute to an Industrial Tribunal was wholly without jurisdiction or in excess of it, and he accordingly prays—(1) that a writ of mandamus should issue to the State Government requiring it to recall the reference which has been made to the Industrial Tribunal, or (2) that a writ of prohibition should issue to the Tribunal requiring it to refrain from dealing with the reference. As we are confronted at the outset with a choice of alternatives, we must come to a decision as to which of the two remedies, if any, should be selected in the present case.

The office of the remedy of mandamus has been admirably described in *George's Creek Coal and I. Co.* v. *Allegany County* (1), as follows—

> "Mandamus is a most valuable and essential remedy in the administration of justice,

(1) (1882) 59 Md. 255.

but it can only be resorted to to supply the want of some more appropriate ordinary remedy. Its office, as generally used, is to compel corporations, inferior tribunals, or public officers to perform their functions, or some particular duty imposed upon them, which, in its nature, is imperative, and to the performance of which the party applying for the writ has a clear legal right. The process is extra-ordinary, and if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, this writ will not be granted. The application for the writ being made to the sound judicial discretion of the court, all the circumstances of the case must be considered in determining whether the writ should be allowed or not; and it will not be allowed unless the court is satisfied that it is necessary to secure the ends of justice, or to subserve some just or useful purpose."

There are four prerequisites essential to the issue of the writ : (1) whether the petitioner has a clear and specific legal right to the relief demanded by him ; (2) whether there is a duty imposed by law on the respondent; (3) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; and (4) whether the petitioner has any remedy, other than by way of mandamus, for the enforcement of the right which has been denied to him. These are the questions, but only some of the questions, which are necessary to be decided in every application for mandamus.

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

The first point for decision in the present case is whether the petitioners have a clear and unequivocal right to the relief demanded by them, for mandamus is a discretionary writ and will not be granted unless the rights of the petitioner are clear. He must show not only that he has a legal right to have the act performed but that the right is so clear and well-defined as to be free from any reasonable controversy. The writ cannot issue when the right is doubtful, or not complete, or is a qualified one, or where it depends upon an issue of fact to be determined by the respondent. Section 10(1)(c) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute, or any matter appearing to be connected with or relevant to the dispute, to a Labour Court for adjudication. This section confers no legal right on the petitioner, and imposes no duty on the respondent. Mandamus cannot issue to determine academic questions or empty and barren technical rights.

This brings me to the decision of the next question, namely whether the duty which has been imposed by section 10(1)(c) is of an imperative ministerial character involving no judgment or discretion on the part of the State Government. A ministerial act is one which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. If, therefore, a statute directs a public officer to perform an act in regard to which no discretion is committed to him then that act would be ministerial although depending upon a statute which requires in some degree a construction of its language by the officer concerned. The fact that it is necessary for an executive officer to read

and to construe a statute in order to ascertain the precise duty which he is required to perform, would not preclude its coercion by a writ of mandamus so long as the duty is plainly prescribed and is equivalent to a positive command. If, however, the duty is not plainly prescribed or if the law confers discretion on the respondent to do or not to do a certain act as he may choose, the duty must be regarded as involving the exercise of judgment or discretion which cannot be controlled by mandamus even though the construction of the officer may be erroneous. This is particularly, so when the statute by which the duty is imposed is couched in permissive terms. The use of the expression "may" often indicates that the Legislature did not wish to impose on the person concerned a clear legal duty to act but wished merely to confer a discretion on him to act or not to act as he may choose. In such a case discretion can obviously not be controlled by mandamus unless the decision is so manifestly arbitrary and capricious that it cannot be allowed to stand; and the Court is called upon to decide not whether the decision of the authority was right or wrong but whether the decision made in the discharge of a duty imposed by Law and the exercise of judgment and discretion, should be compelled to be withdrawn.

The power of the Courts to interfere with the discretion conferred upon Governments and officers has been brought out with admirable clarity in a number of decisions of the Supreme Court of the United States. It will suffice for the purpose of this case to refer only to two cases. In *Decatur* v. *Paulding* (1), it was held that mandamus could not be awarded to compel the head of one of the executive departments to allow a claim, under one construction of a resolution of Congress, which he

(2) 10 L. Ed. 559, 568.

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

had disallowed under another construction, the Court saying:—

"The duty required by the resolution was to be performed by him as the head of one of the executive departments of the Government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act..... If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a department. And, if they supposed his construction to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorised him to exercise discretion or judgment. Nor can it by mandamus act directly upon the officer, and guide and control his judgment

or discretion in the matters committed to his care, in the ordinary discharge of his official duties..... The interference of the courts with the performance of the ordinary duties of the executive departments of the Government would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given to them."

In *United States ex rel. Riverside Oil Co.* v. *Hitchcock* (1), it was sought by mandamus to compel the Secretary of the Interior to depart from a decision of his, to the effect that a forest reserve lieu-land selection must be accompanied by an affidavit that the selected land was nonmineral in character and unoccupied, and it was held that his judgment and discretion could not be thus controlled, it being said :

"Congress has constituted the Land Department under the supervision and control of the Secretary of the Interior, a special tribunal with judicial functions, to which is confided the execution of the laws which regulate the purchase, selling, and care and disposition of the public lands. ..... Whether, he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty, to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction. The court has no general supervisory power over the officers of

(1) 190 U.S. 316

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

the Land Department by which to control their decisions upon questions within their jurisdiction. If this writ were granted, we would require the Secretary of the Interior to repudiate and disaffirm a decision which he regarded it his duty to make in the exercise of that judgment which is reposed in him by law, and we should require him to come to a determination upon the issues involved directly opposite to that which he had reached and which the law conferred upon him the jurisdiction to make. Mandamus has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gave him the power and imposed upon him the duty to decide for himself. The writ never can be used as a substitute for a writ of error. Nor does the fact that no writ of error will lie in such a case as this, by which to review the judgment of the Secretary, furnish any foundation for the claim that mandamus may, therefore, be awarded. The responsibility, as well as the power, rests with the Secretary, uncontrolled by the courts."

A similar view has been expressed by our own Supreme Court, for in *State of Madras* v. *C. P. Sarathy and another* (1), while dealing with the powers of Government under section 10(1) of the Industrial Disputes Act, the Court observed as follows—

> "But, it must be remembered that in making a reference under section 10(1) the Government is doing an administrative

(1) 1953 S.C.R. 334, 346

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 a quasi-judicial determination. No doubt, it will b e 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. The observations in some of the decisions in Madras do not appear to have kept this distinction in view."

The Act of 1947 confers upon the State Government the power, and imposes upon it the duty, to decide for itself, in the exercise of its own judgment and discretion whether an industrial dispute does or does not exist or whether such dispute should or should not be referred for adjudication to a tribunal.

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

The duty imposed upon the State Government is not of a ministerial character but is one involving judgment and discretion. The State Government is the sole arbiter in deciding whether an industrial dispute exists or is apprehended *Royal Calcutta Golf Club Mazudur Union* v. *State of West Bengal and others* (1). If, therefore, it comes to a decision in regard to the existence or non-existence of a dispute this decision must be deemed to have been arrived at in a case where the law authorises it to exercise judgment or discretion. It must be deemed to have been arrived at in a case where the Legislature has vested it with jurisdiction. The decision may be wrong, but it cannot be said that by coming to a wrong decision the State Government has attempted to perform an act over which it had no jurisdiction. It had jurisdiction to decide the matter and it has decided the said matter even though the decision may be held to be erroneous in point of law *State of Bombay* v. *Luxmidas Ranchhoddas and another* (2). All reasonable presumptions must be drawn in support of the action of the State Government.

Although it is within the competence of the Court to test the validity of an administrative order and to interfere with it if it was passed without jurisdiction,I entertain no doubt in my mind that the decision of the State Government in the present case to refer the dispute which had arisen between the parties to an Industrial Tribunal was neither *mala fide* nor arbitrary nor ministerial. On the other hand, I am satisfied that this decision was made in the exercise of judgment and discretion conferred by law and cannot be controlled by mandamus.

Nor can it be said that the petitioners have no other legal remedy, adequate to afford the desired relief. It has been held in a long line of authorities

(1) A.I.R. 1956 Cal. 550.
(2) A.I.R. 1952 Bom. 468

which go back to early times that a writ of mandamus can be granted only where there is a specific legal right and no other legal remedy adequate to enforce that right. Blackstone stated that a mandamus is "a high prerogative writ, of a most.....remedial nature" and "issues in all cases where the party has right to "have anything done, and has no other specific means of "compelling its performance." (Blackstone's Commentaries, Volume III, page 110). Lord Mansfield expressed the view that when there is no specific remedy the Court will grant a mandamus that justice may be done (*Rex* v. *Bank of England* (1), This statement was amplified and explained by Lord Esher M. R. in *In re Nathan* (2), where his Lordship observed—

> "Where there is no specific remedy, and by reason of the want of that specific remedy justice cannot be done unless a mandamus is to go, then a mandamus will go."

In the same case Bowen L.J., observed as follows—

> "A writ of madamus, as everybody knows, is a high prerogative writ, invented for the purpose of supplying defects of justice, By Magna Charta the Crown is bound neither to deny justice to anybody, nor to delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done. The proceedings, however, by mandamus is most cumbrous and most expensive; and from time immemorial, accordingly, the Courts have never granted a writ of mandamus where there was another more convenient or feasible remedy within the reach of the subject."

(1) 2 Doug. 524 at 526.
(2) 12 Q.B.D. 473

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

In *In re Barlow* (1), Hill, J., declared that where there is a remedy equally convenient, beneficial and effectual, a mandamus will not be granted by the Court of Queen's Bench. But this is not a rule of law, but a rule regulating the discretion of the Court in granting the writ, and unless the Court can see clearly that there is no other remedy equally convenient, beneficial and effectual, the writ will not be granted. These dicta were cited with approval by Field, J., in *Reg.* v. *Registrar of Joint Stock Companies* (2), who added—

> "We have, therefore, to see whether or not there is a remedy equally beneficial with this remedy of mandamus. My own opinion is that this prerogative writ is a most inconvenient remedy, though less so than formerly. There is at first a rule that it do issue, and then a return would have to be made to it; and the question to be settled could not be decided without much delay."

These authorities make it quite clear that if a petitioner has a clear legal right to the performance of a particular duty, if he has no other specific legal remedy which is adequate to afford complete relief, and if there would be failure of justice if the aid of this Court is not extended, remedy by way of mandamus may be invoked. It is not necessary for us to delve deeply into this question as I am satisfied from the arguments which have been addressed to us that the petitioners have no clear or unequivocal legal right to the relief to which they consider themselves entitled and that the orders passed by Government were passed in the exercise of judgment or discretion

(1) 30 L.J.Q.B. 271
(2) 21 Q.B.D. 131, 135

and not upon irrelevant and extraneous considerations:

There is another aspect of the matter which needs to be considered. Remedy by way of mandamus is no sense a curative or preventive remedy. Mandamus is a positive or remedial process, not a negative or preventive one. It is not the province of mandamus to prohibit the passing of an order or to review one which has already been passed, or to undo an act which has already been performed, or to revise action which has already been taken, or to restrain or prevent an improper interference with the rights of petitioners. It is a coercive and not a corrective writ; it stimulates the lethargic into action; it commands performance not desistence: It cannot lie to restrain action and canot compel the State Government to recall an order of reference which has already been made by it in exercise of the powers conferred by law. It would be wholly improper to invoke the help of this remedy in the present case, for it is contrary to public policy that the work of Government in securing an amicable settlement of disputes should be hampered by mandamus except where the departure from the statute is clear beyond dispute or where Government attempts to perform an act over which it has no jurisdiction whatever. I am unable to hold in the present case that Government has clearly manifested a determination to disobey the law.

But it is contended on behalf of the petitioners that if a writ of mandamus cannot be issued to the State Government to withdraw the reference made to the Tribunal, a writ of prohibition should issue to the Tribunal restraining it from dealing with the reference on the ground that the dispute which has arisen between the parties is not an industrial dispute. There is considerable force in this contention, for the writ of prohibition is designed primarily to prevent a tribunal

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari, C. J.

possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.

Two courses are now open to this Court, viz., either to direct the parties to obtain an adjudication on the question of jurisdiction from the Tribunal or to give an adjudication itself.

The learned counsel for the petitioner contends that a tribunal has no jurisdiction to question the validity of the reference made to it and consequently that this Court should issue a writ of prohibition to the Tribunal itself and should not wait till the Tribunal has given its own decision on the question of its competency. Two authorities have been cited in support of this contention. The first case is reported as *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal, Madras and another* (1). In this case a Division Bench of the Madras High Court doubted whether an appellate tribunal has power to declare the reference by Government to be invalid or to hold that the Industrial Disputes Act, itself is invalid or otherwise. This remark appears to have prompted the learned Judicial Commissioner of Bhopal in *Hamidia Match Manufacturing Co., Ltd., Bhopal* v. *State of Bhopal and another* (2), to express the view that the Tribunal to whom an industrial dispute is referred for adjudication is not at liberty to decide whether the reference is valid or otherwise but is bound to deal with it as it stands. The view taken by the learned Judicial Commissioner appears to me to be wholly misconceived. The jurisdiction of every judicial or quasi-judicial tribunal is derived from and limited by the statute or other instrument by which it has been created, and every judicial or quasi-judicial tribunal has power to determine the boundaries of its

(1) A.I.R. 1953 Mad. 98
(2) A.I.R. 1954 Bhopal 17

own jurisdiction. Indeed, it has been said that every such tribunal should, of its own motion, consider the question of its jurisdiction over any matter brought before it even though it is not raised by the parties. Nor, is there any substance in the contention that the language of section 15(1) of the Industrial Disputes Act does not permit the Tribunal to question the validity of a reference made to it by the State Government. I am of the opinion that question of jurisdiction should be raised before the tribunal itself and decided by it in accordance with law.

It is a recognized practice of Courts that when a person challenges the jurisdiction of a tribunal, the Court declines to examine the question until the question has been examined and pronounced upon by the tribunal itself. (*Management of Kadachira Motor Service Ltd. and another* v. *State of Madras and others* (1)). The superior Court should not proceed on the assumption that the tribunal will go beyond its jurisdiction and should, therefore, refrain from interfering before the inferior tribunal has had an opportunity of considering whether any of the matters in controversy between the parties falls within its jurisdiction.

The objection in regard to the transfer of the case from one Tribunal to the other remains to be decided. In paragraph 14 of the written statement the State Government explain that they did not order the transfer of the case from one Tribunal to another but only corrected a clerical mistake. There is in my opinion no substance in the objection.

For these reasons I am of the opinion that the application for the issue of a writ of mandamus was incompetent and that the application for the issue of a writ of prohibition was premature. The appeal must, therefore, be dismissed with costs. I would order accordingly.

(1) ~~I.L.R.~~ 1957 Mad. 700

A.I.R.

The Karnal-Kaithal Co-operative Transport Society; Ltd., Karnal.
v.
The State of Punjab and another.

Bhandari. C. J.

It would of course be open to the petitioners, if they so desire, to raise the question of jurisdiction before the Industrial Tribunal before which the dispute is pending. If the decision of the Tribunal is adverse to the petitioners, it would be open to them to apply again to this Court for the issue of a writ of prohibition.

CHOPRA, J.—I agree.