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authority to call the occupant at the initial stage in the very first instance before fixing the value. It would be open to the authority concerned to call the occupant if he has already been found to be eligible for allotment under rule 34-C or to fix the value without calling him and to intimate the same to the lessee. If, however, the lessee feels aggrieved by his *ex parte* fixation of value and questions or impugns the same before the same authority in appropriate proceedings or in an appeal against such an order, it would not be open to the authority concerned to refuse to the aggrieved party an adequate opportunity to show cause against such *ex parte* fixation of value. The nature of the opportunity to be given will depend upon the circumstances of each case. But the principles of natural justice would not be satisfied if the aggrieved party is not allowed to rebut the evidence on which the *ex parte* value has been fixed and/or is not allowed to lead his own evidence to show what the correct or the proper value should be. The aggrieved party should certainly be entitled to know the evidence on which the *ex parte* value has been fixed in order to be able to rebut it.

This writ petition is, therefore, granted, the impugned orders of respondents Nos. 1 to 3 are set aside and quashed. The eligibility of the petitioner under rule 34-C except for the question of valuation having already been determined, the authorities would now proceed according to law for determining the value of the property in question in accordance with the principles set forth above. In the peculiar circumstances of the case we make no order as to costs.

I. D. DUA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

THE WORKMEN OF THE OSWAL WEAVING FACTORY,—
Petitioners

versus

THE STATE OF PUNJAB—*Respondent.*

Civil Writ No. 1678 of 1962.

1965

May, 20th.

Industrial Disputes Act (XIV of 1947)— Ss. 10(1) and 12(5)— Powers of appropriate Government under—Whether administrative— High Court—When can interfere—Constitution of India (1950)— Article 226—Directions and Orders under —When normally to be

given—Punjab High Court Rules and Orders—Volume V—Chapter 4-F(b)—Rule 6—Written statement to a writ petition—Whether to be in the form of affidavit—Form of affidavit indicated.

Held, that in deciding whether to make a reference or not under sections 10(1) and 12(5) of the Industrial Disputes Act, the appropriate Government acts in an administrative capacity and not in exercise of judicial or quasi-judicial powers, but this does not mean that the decision of the Government is not liable to be declared *non est* and that High Court cannot issue a direction to the appropriate Government to decide the matter in accordance with law where it is found that reference has been declined either on extraneous considerations or *mala fide* or without even refering to the report of the Conciliation Officer under section 12(4) of the Act. The following propositions emerge from the consideration of the decided cases in this behalf.—

(1) That an appropriate Government acting in exercise of its powers under section 10(1) read with section 12(5) of the Act exercises administrative functions and not judicial or quasi-judicial functions;

(2) That in exercise of its powers under section 10(1) of the Act, the appropriate Government has a discretion to refer or not to refer any dispute to a Labour Court or Tribunal, but such discretion has to be exercised in accordance with the provisions of the Act itself, i.e., the appropriate Government can decline to make a reference only on two grounds, viz.,—

(i) that there is no industrial dispute which can be referred; and

(ii) that it is not expedient to make a reference in the circumstances of the case;

(3) If an appropriate Government declines to make a reference on any of the above-mentioned two permitted grounds, the decision of the Government would not be amenable to a writ or direction of the High Court and it would not be open to the Court to compel the Government to make a reference. The High Court will not sit in appeal over the decision of the appropriate Government on any of the above-mentioned two matters.

(4) An approprite Government can be compelled by a writ in the nature of *mandamus* to consider the matter as required

by section 12(5) of the Act and then to exercise its discretion under section 10(1) of the Act in accordance with law if it is either admitted or proved that conciliation proceedings had taken place and a report had been submitted by the Conciliation Officer under section 12(4) of the Act, but that the State Government had not seen the report of the Conciliation Officer or taken it into consideration at all before deciding whether to make a reference or not;

(5) A writ of *mandamus* would also issue if the Government declines to make a reference under section 12(5) of the Act, without recording the reasons for such refusal and without communicating the same to the parties concerned; and

(6) An appropriate writ would also issue to the State Government if it is admitted or proved that the refusal to make a reference of the dispute in question is not *bona fide* or is actuated by malice or is based on considerations which are wholly irrelevant or extraneous and are not germane to the statutory considerations on which reference can be declined.

Held, that it is neither possible nor proper to fetter the discretion of the High Court in the matter of exercise of its powers under Article 226 of the Constitution or to lay down any hard and fast rules for the same. But normally the High Court will give appropriate orders or directions under Article 226 of the Constitution when it is found:—

(1) that a judicial or quasi-judicial tribunal or a statutory authority has—

(i) acted without inherent jurisdiction; or

(ii) acted in excess of its juridiction; or

(iii) assumed jurisdiction where it had none; or

(iv) while exercising judicial or quasi-judicial functions passed some order in which some glaring error of law on some material point is apparent on the face of the record and on account of such assumption, refusal or excess of jurisdiction or such error of law, manifest injustice has resulted to the aggrieved party;

(2) when a statutory authority passes an order which is tainted with fraud or is actuated by malice or is vitiated on account of having been passed on some wholly extraneous considerations;

(3) when the impugned order or action is violative of any of the fundamental rights enshrined in part III of the Constitution;

(4) when the impugned order or action is violative of any statutory right of the petitioner and the violation has resulted in manifest injustice to the petitioner and he has no other adequate alternative remedy to get the wrong rectified;

(5) when the life or property of a citizen of this country is being jeopardised by the State and the State is not able to support such an interference with the life, liberty or property of the subject on the authority of any valid law.

Held, that a written statement to a writ petition under Article 226 of the Constitution of India should be in the form of an affidavit as required by Rule 6 of Chapter 4-F(*b*) of the Punjab High Court Rules and Orders, Volume V. The affidavit has to be drawn, verified and sworn properly and has to conform to the requirements of Rule 3(1) or Order 19 of the Code of Civil Procedure.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 2nd April, 1965, to a larger Bench for decision owing to the importance of the question of Law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, on 20th May, 1965.

Petition under Article 226 of the Constitution of India, praying that a writ of mandamus or any other appropriate writ, order, or direction be issued directing the Government to dispose of afresh according to law the question whether a reference of the dispute relating to the dismissal of Bhola Nath is called for.

ANAND SWAROOP AND R. S. MITTAL, ADVOCATES, for the Petitioners.

M. R. SHARMA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondet.

Narula, J.

NARULA, J.—On 14th April, 1962, Bhola Nath (hereinafter referred to as the employee) an employee of the Oswal Weaving Factory, Amritsar (hereinafter called the employer) was dismissed from service. The Textile Mazdoor Ekta Union, Amritsar (which I will call in this judgment "the Union") addressed a notice of demand, dated 5th May, 1962 (copy annexure 'A', to the writ petition) to the employer in which three demands were made. We are, however, directly concerned in this case with demand No. 2 which was in the following terms:—

> "Shri Bhola Nath, son of Dwarka Das, has been turned out without notice since 14th April, 1962 and he has not been put on work. It is, therefore, demanded that Shri Bhola Nath should be re-instated on the old job on old conditions of service and he should be paid the compensation from 14th April, 1962 till his re-instatement."

Copy of this demand notice was docketed to the Conciliation Officer, Circle I, Amritsar. The demand was not met by the employer. Conciliation proceedings under the Industrial Disputes Act (14 of 1947) as thereafter amended (hereinafter referred to as the Act) resulted in a failure. The Conciliation Officer thereupon reported the failure of the proceedings to the State Government in his report under section 12(4) of the Act. Copy of this report was obtained by us at the hearing of the writ petition from the learned counsel for the State. The Conciliation Officer reported that demand No. 1, did not deserve any further action at that stage. Regarding demand No. 3, he stated in his report that the demand was not justified in view of the fact that the employer's factory was a small one. Regarding demand No. 2 (the demand for the reinstatement of the employee) it was stated by the Conciliation Officer in his said report as follows:—

> "*Demand No. 2.*—The demand of the Union is that Shri Bhola Nath, son of Shri Dwarka Dass, whose services have been terminated with effect from 14th April, 1962, without any notice should be reinstated with full back wages. Shri Gobind

Ram, Clerk, of the Mills, stated that the workman was found drunk while on duty and had also misbehaved wih other workmen. On inquiries he stated that no charge-sheet or opportunity to explain his conduct was given to the workman. Shri Gobind Ram added that the management were not prepared to take Shri Bhola Nath back in service. As the dismissal of Shri Bhola Nath by the management is totally unjustified and improper I am left with no option but to recommend the reference of this case to adjudication as per draft enclosed."

To the report of the Conciliation Officer was attached a draft notification putting in issue the disupte in connection with which a reference under the Act was recommended by the Conciliation Officer. This was in the following terms:—

"Whether the termination of service sof Shri Bhola Nath, son of Dwarka Dass, is justified and in order ? If not, to what relief/exact amount of compensation he is entitled ?"

On 11th July, 1962, the Secretary to the Punjab Government, in the Department of Labour wrote to the General Secretary of the Union, declining to make a reference in connection with either of the three demands. No mention at all was made in this detailed letter to the report which had been submitted by the Conciliation Officer, under section 12(4) of the Act. In connection with demand No. 2, it was stated in this letter (copy, annexure 'B' to the writ petitions) as follows:—

"Since Shri Bhola Nath was found drunk in the premises of the factory which tantamounts to serious misconduct, the action of the management in removing him from service appears to be in order. The case of the worker, therefore, does not merit reference for adjudication."

On 25th July, 1962, the Union made a further written representation to the State Government (copy annexure 'C' to the writ petition) wherein it was stated as follows regarding the relevant demand:—

"Regarding demand No. 2, we do not know how the Government has constituted itself as the Judge in

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establishing the guilt of Shri Bhola Nath. The Clerk sent by the employer conceded before the Conciliation Officer that Shri Bhola Nath was never charge-sheeted and no enquiry was held against him to prove the charge. No report was lodged in a police station. How the Government has come to the conclusion that Shri Bhola Nath was found drunk, we fail to undertsand. The case of the worker is very strong and the management had no right to turn him out in this arbitrary manner. If the case of this worker is not fit for adjudication, then we think no worker could hope for adjudication when the reference has to be made by the Government. In this respect please refer to the judgment of Madras High Court quoted in Volume XXII parts V & VI at page 199."

In this letter the Union requested the Government to reconsider its decision and to order a reference and adjudication immediately. The reply to this representation is contained in the Government's letter, dated 20th September, 1962, copy of which has been submitted by the petitioner in this Court as annexure 'D' to the writ petition. Regarding the demand in question it was stated by the Government in the said communication as follows:—

> "The other demand relating to the reinstatement of Shri Bhola Nath has not been considered fit for reference even on reconsideration."

Thus having exhausted all possible alternative remedies, the Union acting for and in the name of the workmen of the Oswal Weaving Factory, Amritsar, applied to this Court under Article 226 of the Constitution for an appropriate writ or order to direct the Government to dispose of afresh according to law the question whether a reference of the dispute relating to the dismissal of Bhola Nath is called for.

On behalf of the State a written statement, dated nil duly verified by the Deputy Labour Commissioner, Punjab has been filed in this Court on or about 7th December, 1962. It is noticed with regret that the State has not complied

with the requirements of rule 6 of Chapter 4-F(b) of the Punjab High Court Rules and Orders, Volume V, which requires a written statement to a writ petition under Article 226 of the Constitution to be in the form of an affidavit. Affidavits have to be drawn, verified and sworn properly and have to conform to the requirements of rule 3(1) of Order 19 of he Code of Civil Procedure. The return made to the rule in this case is in the form of a written statement prescribed by the Code of Civil Procedure and purports to be verified in the same manner though not even as required by Order 6, rule 15 of the Code. This does not satisfy the requirements of law. Strictly speaking there is no proper return to the rule issued by the Court in this case. But in the interest of justice the written statement is being looked into and has been taken into consideration to avoid further delay. I would, however, like to make it clear that this may not be taken as a precedent for such lapse being condoned in future.

In this written statement the reply of the State on merits is contained in paragraphs 3 and 8 thereof. Relevant parts of these paragraphs are reproduced below:—

"Para 3.....this much is admitted that one Shri Gobind Ram appeared on behalf of the management before the Conciliation Officer, Amritsar, who stated that Shri Bhola Nath, son of Shri Dwarka Dass, was found drunk while on duty and had also misbehaved with other workmen. He also stated that no charge-sheet was framed against him and no opportunity was given to him to explain his conduct before dismissal....."

Para 8. ".....The State Government has full jurisdiction to decide whether an Industrial Dispute exists or apprehended and also to decide about its desirability for referring it for adjudication. In the present case a decision, after full consideration of the facts of the case, was taken that the dispute is not worth reference for adjudication. No adjudication of the dispute was made by the State Government."

This petition came up for hearing before Dua, J., on 2nd April, 1965 and the learned Judge was of the opinion

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that the question raised in this case is of considerable importance and is likely to arise quite frequently and that, therefore, it is desirable that the main point involved in this case should be disposed of by a larger Bench in the very first instance. In pursuance of the said order of reference this case has come up before us.

The learned counsel for the State has submitted that in exercise of our powers under Article 226 of the Constitution we cannot interfere in the discretion exericsed by the State Government under section 10(1) of the Act in refusing to make a reference. This Court in exercise of its powers under Article 226 of the Constitution has certainly no intention to interfere with the exercise of discretion by any authority or tribunal provided the authority has not exceeded the bounds of its jurisdiction or acted *mala fide* or based its order on wholly extraneous grounds. But it is the constitutional duty of this Court to keep all authorities and tribunals (under the Court's jurisdiction) while discharging their judicial, quasi-judicial or statutory functions within the bounds of their jurisdiction and to compel them, wherever necessary, to perform the duties enjoined on them by law strictly in accordance with the relevant statutory provisions. This is the only way in which this Court can assist in the maintenance of rule of law which is enshrined in Article 14 of our Constitution in this Republic. This Court would indeed be failing in its duty if it declines even in a proper case to compel any authority, howsoever, high, which is otherwise within its jurisdiction, to conform to the rule of law and to act within the circumscribed limits of their statutory authority. Normally the Court will give appropriate orders or directions under Article 226 of the Constitution when it is found:—

(1) that a judicial or quasi-judicial tribunal or a statutory authority has—

(i) acted without inherent jurisdiction; or

(ii) acted in excess of its jurisdiction; or

(iii) assumed jurisdiction where it had none; or

(iv) while exercising judicial or quasi-judicial functions passed some order in which some glaring error of law on some material point is apparent on the face of the record; and

on account of such assumption, refusal, or excess of jurisdiction or such error of law manifest injustice has resulted to the aggrieved party;

(2) when a statutory authority passes an order which is tainted with fraud or is actuated by malice or is vitiated on account of being based on some wholly extraneous considerations;

(3) when the impugned order or action is violative of any of the fundamental rights enshrined in Part III of the Constitution;

(4) when the impugned order or action is violative of any statutory right of the petitioner and the violation has resulted in manifest injustice to the petitioner and he has no other adequate alternative remedy to get the wrong rectified;

(5) when the life or property of a citizen of this country is being jeopardised by the State and the State is not able to support such an interference with the life, liberty or property of the subject on the authority of any valid law.

It is neither possible nor proper to fetter the discretion of this Court in the matter of exercise of its powers under Article 226 of the Constitution or to lay down any hard or fast rules for the same. But this jurisdiction is to be normally exercised keeping in view the above principles and at the same time keeping in view the fact that it is not for this Court to interfere in the day-to-day work of statutory and other authorities so long as they remain within their bounds and do their duties as enjoined on them by law.

Coming back to the facts of this case it has been urged by Mr. Anand Swaroop the learned counsel for the petitioner that we should set aside the orders of the State Government declining to make a reference of the dispute in question relating to the claim for the reinstatement of the employee and to direct the respondent to consider the matter afresh and to decide it in accordance with law. In

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support of this relief claimed by the petitioner three main points have been urged by its learned counsel, viz.,—

(1) the solitary ground on which the Government has declined to make a reference is extraneous to the considerations prescribed by law and it is not a valid ground for declining a reference;

(2) that in deciding under section 10(1) of the Act whether or not to make a reference there are only two valid considerations which can lawfully influence the mind of the Government in declining to make a reference, i.e., existence or non-existence of an industrial dispute within the meaning of section 2(k) of the Act and the question of expediency which would depend on the circumstances of each case;

(3) that it was the duty of the State Government in exercise of its powers under section 10(1) of the Act to decide the question of making or not making a reference of the dispute in question only after a consideration of the report referred to in sub-section (4) of section 12, i.e., the report of the Conciliation Officer.

These submissions of the learned counsel are substantially overlapping but have been reproduced almost in the words in which they were formulated by him. In support of these submissions Mr. Anand Swaroop relies on various cases. Before dealing with those cases, however, it is necessary to set out the relevant provisions of the Act. Section 2(k) of the Act defines an industrial dispute and reads as follows:—

"(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

Relevant part of section 10(1) reads as follows:—

"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,—

(a) refer the dispute to a Board for promoting a settlement thereof; or....."

Before the stage for making a reference under section 10(1) of the Act arises, conciliation proceedings take place. Section 12 provides the machinery for the same. Relevant parts of section 12 of the Act are quoted below:—

"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.

(2) * * * * *
(3) * * * * *
(4) * * * * *
(5) * * * * *
(6) * * * * *
Provided....."

The stage is now set for considering the cases cited by the learned counsel for the petitioner. In *State of Bombay and another* v. *Krishnan (K.P.)* and *others* (1), it was held by the Supreme Court that even after the conciliation proceedings under section 12(5) of the Act reference can only be made by the State Government under section 10(1) thereof and that it could not be contended that while the appropriate Government acts under section 12(5), it is bound to base its decision only and solely on consideration of the report made by the Conciliation Officer under section 12(4). Their Lordships of the Supreme Court further held in that case as follows:—

"There is no doubt that, having regard to the background furnished by the earlier provisions of section 12, the appropriate Government would naturally consider the report very carefully and treat it as furnishing the relevant material which

(1) 1960 (II) L.L.J. 592.

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would enable it to decide whether a case for reference has been made or not; but the words of section 12(5) do not suggest that the report is the only material on which Government must base its conclusion. It would be open to the Government to consider other relevant facts which may come to its knowledge or which may be brought to its notice and it is in the light of all these relevant facts that it has to come to its decision whether a reference should be made or not. The problem which the Government has to consider while acting under section 12(5)(a) is whether there is a case for reference. This expression means that the Government must first consider whether a *prima facie* case for reference has been made on the merits. If the Government comes to the conclusion that a *prima facie* case for reference has been made, then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference. The question as to whether a case for reference has been made out can be answered in the light of all the relevant circumstances which would have a bearing on the merits of a case as well as on the incidental question as to whether a reference should nevertheless be made or not. A discretion to consider all relevant facts, which is conferred on the Government by section 10(1) could be exercised by the Government even in dealing with the cases under section 12(5) provided of course the discretion is exercised *bona fide*, its final decision is based on a consideration of relevant facts and circumstances, and the second part of section 12(5) is complied with."

Regarding the power of the Court to issue a writ of *mandamus* to the appropriate Government it was held in the above-mentioned judgment of the Supreme Court as follows:—

"It was common ground in the instant case that a writ for *mandamus* would lie against the appropriate Government if the order passed by it

under section 10(1) is for instance contrary to the provisions of sections 10(1)(a) to (d) in the matter of selecting the appropriate authority; it is also common ground that in refusing to make a reference under section 12(5) if Government does not record and communicate to the parties concerned its reasons therefor a writ of *mandamus* would lie. Similarly it is not disputed that if a party can show that the refusal to refer a dispute is not *bona fide* or is based on a consideration of wholly irrelevant facts and circumstances a writ of *mandamus* would lie. The order passed by the Government under section 12(5) may be an administrative order and the reasons recorded by it may not be justifiable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the Court hearing a petition for *mandamus* is not sitting in appeal over the decision of the Government; nevertheless if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane, then the Court can issue, and would be justified in issuing a writ of *mandamus* even in respect of such an administrative order."

The next case relied upon by the learned counsel for the petitioners is the judgment of the Madras High Court in *Workmen of South India Saiva Siddhanta Works Publishing Society* v. *Government of Madras* (2). In this case it was held that the Government in exercise of its powers under section 10(1)(c) of the Act has no right to take upon itself the duty of adjudicating the dispute. The limited power that has been conferred by the provisions is to make a reference and not to adjudicate on the dispute sought to be referred. The Madras High Court further held in that case that there might be a variety of reasons why the Government may consider that no reference of the dispute is called for but that it could not substitute its own judgment on the propriety or otherwise of the dismissal, which is a matter left for adjudication to the appropriate Labour Court or Tribunal. In the case before the Madras

(2) 1962 (II) L.L.J. 120.

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High Court no reason had been given by the State Government in declining to make a reference under section 12(5) of the Act but had merely given its decision on the merits of the dispute. The Madras High Court held that the dismissal was justified according to the State Government was not a valid reason for declining to make a reference.

Reliance was then placed on a recent judgment of the Supreme Court in *Bombay Union of Journalists and others* v. *State of Bombay and another* (3). In that case it was held that if the appropriate Government refuses to make a reference for irrelevant considerations or on extraneous grounds, or acts *mala fide*, the party would be entitled to move the High Court for a writ of *mandamus*.

Mr. M. R. Sharma, appearing for the State, relied on certain observations of the Supreme Court in *The State of Madras* v. *C. P. Sarathy and another* (4), to the effect that though it is desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference, 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. On that basis the Supreme Court held that the Court cannot canvass the order of reference closely to see if there was any material before the Government to support the conclusion, as if it was a judicial or quasi-judicial determination.

It is true that in deciding whether to make a reference or not, the appropriate Government is acting in an administrative capacity and not in exercise of judicial or quasi-judicial powers, but this does not mean that the decision of the Government is not liable to be declared *non est* and that this Court cannot issue a direction to the appropriate Government to decide the matter in accordance with law, where it is found that reference has been declined either on extraneous considerations or *mala fide* or without even referring to the report of the Conciliation Officer under section 12(4) of the Act. No doubt an administrative order

(3) 1964(I) L.L.J. 351.
(4) A.I.R. 1953 S.C. 53.

is not amenable to a writ of *certiorari*, but even administrative orders can be set aside and quashed under Article 226 of the Constitution in appropriate cases on proper grounds.

Mr. Sharma then referred to the Full Bench judgment of the Patna High Court in *Bagaram Tuloule* v. *The State of Bihar* (5), where it was held that *mandamus* will not issue in a matter of discretion, and that under sub-section (1) of section 10 of the Act it is a discretion that is given to the Government rather than a duty or obligation imposed on it. In that case it was further held that the word "inexpedient" in the proviso to section 10(1) of the Act is very wide and despite the use of the word "shall", it gives complete discretion to the Government. On that basis the Full Bench of the Patna High Court decided that where a State Government refuses to refer the industrial dispute under the proviso to sub-section (1) of section 10 of the Act, a writ of *mandamus* under Article 226 cannot be issued directing the Government to refer the dispute under the proviso. There is no quarrel with this proposition of law. It is undoubted that a discretion is vested in the Government in this matter. This is clear from the very fact that power is expressly given by the Act to refuse to make a reference. But it is significant that the law enjoins a duty on the appropriate Government to give reasons for refusal to make a reference. Provision to this effect appears to have been made to ensure that the appropriate authority really applies its mind to the two considerations on which reference can be declined. There appears to be no other purpose for making it compulsory for the Government to state its reasons for declining to make a reference when such an order is not subject to any further appeal or revision. The controversy before the Patna High Court appeared to be whether on account of the use of the word "shall" in the proviso to section 10(1) of the Act, it was necessary for the appropriate Government to make a reference in every case or whether the Government had, in any circumstances, a discretion to refuse to make a reference. But it cannot be argued on the basis of the judgment of the Patna High Court that even if a refusal to make a reference is not on the grounds given in the proviso to sub-section (1) of section 10 of the Act, no relief can be granted by this

(5) A.I.R. 1958 Pat. 387.

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Court. This has indeed been settled by the judgment of the Supreme Court referred to above *State of Bombay and another* v. *Krishnan (K. P.) and others* (1).

Reference was then made to the judgment of the Madras High Court in *The State of Madras* v. *Swadesamitran Printers Labour Union* (6), and to the judgment of the Calcutta High Court in *Royal Calcutta Golf Club Mazudur Union* v. *State of West Bengal and others* (7). These cases lay down the same proposition of law as was settled by the Full Bench of the Patna High Court and do not, therefore, help this Court in deciding the matter in issue in the present case. I have already held above that if the discretion is exercised by the State Government within the four corners of the statute, this Court cannot interfere in the same. Government is no doubt the sole arbiter to judge whether there exists an industrial dispute between the parties or not, and even if it is so, whether it is, in the circumstances of the particular case, expedient to make a reference or not. But if reference is declined on any extraneous ground, this Court is entitled to interfere.

It is not necessary to decide in this case whether the Court can interfere under Article 226 of the Constitution even in a case where the Government states that it has declined to make a reference because it thought it expedient to do so. It was so held by Chagla, C.J., and Desai, J., in *Firestone Tyre and Rubber Co. of India Ltd.* v. *K. P. Krishnan and others* (8), in the following words:—

> "It is only in two cases that Government is not bound to make a reference when the case falls under the proviso, and the two cases are that the notice is frivolous or vexatious or that the Government considers it inexpedient to make a reference. But the language of section 10(1) and the proviso to section 10(1) cannot be imported into the words of section 12(5). Therefore, when Government applies its mind to a circumstance extraneous to the industrial dispute, extraneous to the case for reference, then Government cannot rely upon

(6) A.I.R. 1952 Mad. 297.
(7) A.I.R. 1956 Cal. 558.
(8) A.I.R. 1956 Bom. 273.

the ground of expediency and say, 'we will refuse to make a reference because we think it is inexpedient'. That answer the Legislature has not permitted the Government to give under section 12(5). That answer Government can only give when it deals with the proviso to section 10(1)."

In the instant case Government has not so stated and it is, therefore, not necessary to enter into this controversy. The observations of P.B. Mukharji, J., in *Madan Gurang and others* v. *State of West Bengal and others* (9), to the effect that the power to refer the dispute under section 10 of the Act is in the appropriate Government, which is the only referring authority, and to the effect that the opinion of the Government is conclusive whether there should be an order for reference or not, need not detain us in view of the law settled by the Supreme Court in the cases to which reference has already been made above.

From a discussion of the above cases following propositions emerge:—

(1) That an appropriate Government acting in exercise of its powers under section 10(1) read with section 12(5) of the Act exercises administrative functions and not judicial or quasi-judicial functions;

(2) That in exercise of its powers under section 10(1) of the Act, the appropriate Government has a discretion to refer or not to refer any dispute to a Labour Court or Tribunal, but such discretion has to be exercised in accordance with the provisions of the Act itself, i.e., the appropriate Government can decline to make a reference only on two grounds, viz.,

(i) that there is no industrial dispute which can be referred; and

(9) A.I.R. 1958 Cal. 271.

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(ii) that it is not expedient to make a reference in the circumstances of the case;

(3) If an appropriate Government declines to make a reference on any of the above-mentioned two permitted grounds, the decision of the Government would not be amenable to a writ or direction of this Court and it would not be open to the Court to compel the Government to make a reference. This Court will not sit in appeal over the decision of the appropriate Government on any of the above-mentioned two matters.

(4) An appropriate Government can be compelled by a writ in the nature of *mandamus* to consider the matter as required by section 12(5) of the Act and then to exercise its discretion under section 10(1) of the Act in accordance with law if it is either admitted or proved that conciliation proceedings had taken place and a report had been submitted by the Conciliation Officer under section 12(4) of the Act, but that the State Government had not seen the report of the Conciliation Officer or taken it into consideration at all before deciding whether to make a reference or not;

(5) A writ of *mandamus* would also issue if the Government declines to make a reference under section 12(5) of the Act, without recording the reasons for such refusal and without communicating the same to the parties concerned; and

(6) An appropriate writ would also issue to the State Government if it is admitted or proved that the refusal to make a reference of the dispute in question is not *bona fide* or is actuated by malice or is based on considerations which are wholly irrelevant or extraneous and are not germane to the statutory considerations on which reference can be declined.

Applying the above tests, I have no hesitation in holding in this case that the petitioner has made out a case for interference by this Court in exercise of its extraordinary

original jurisdiction under Article 226 of the Constitution. In this case in the impugned order (copy annexure 'B' to the writ petition) the Government has not found or stated that there is no industrial dispute between the employer and the employee. Indeed a mere reading of the relevant part of annexure 'B' shows that the Government could not have held in this case that there was no dispute. The Government could form a *prima facie* view about the merits of the dispute and come to a tentative finding in order to decide whether there was in fact an industrial dispute between the parties or not and more so in order to determine whether it is expedient in the circumstances of this case to make a reference or not, but the Government has no jurisdiction to usurp the function of the Industrial Court or Tribunal and to give a final finding on the matter in dispute and justify the refusal to make a reference on the basis of that finding. Still, this is what has been done by the Punjab Government in this case. Nor has it been stated or suggested in the order of the State Government, dated 11th July, 1962, that the Government does not consider it to be expedient to make a reference of the dispute in question. If the State Government had based the refusal to make a reference on any of the said two grounds, we would surely have declined to interfere. A still more serious infirmity in the impugned order is that it almost clearly proves that the State Government did not at all apply its mind to the report of the Conciliation Officer. There is no reference to the report of the Conciliation Officer in the order (copy annexure 'B'). Independent reasons have been given for declining to make a reference in connection with the other two demands on which the Conciliation Officer had recommended that no reference should be made. Even in the written statement filed by the State in this Court it has not been stated that the report of the Conciliation Officer was considered by the Government as required by section 12(5) of the Act. In para 8 of the written statement (reproduced above) it has been emphasised by the respondent that the impugned decision was arrived at "after full consideration of the facts of the case". It is not even stated that the decision was arrived at after consideration of the report of the Conciliation Officer. In fact it appears to be doubtful as to what the decision of the Government would have been if the report of the Conciliation Officer recommending a reference on demand

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No. 2 had been considered. It is not for this Court to guess what the decision of the Government would have been on a consideration of the report and it is certainly open to the State Government to decline a reference, in spite of the recommendation of the Conciliation Officer to make it, if the State Government considers it expedient to adopt that course.

Mr. Sharma then tried to catch at a technical objection. He stated that the employer is a necessary party to these proceedings and this petition should be dismissed on the ground that the petitioner has not impleaded him. In the course which we are adopting in this case, the employer does not necessarily come in. As a result of the order which I am proposing to make in this case the position would be as it was after the submission of the report of the Conciliation Officer, under section 12(4) of the Act and before the decision of the State Government, dated 11th July, 1962. At that stage if the employer has any right, he can exercise it even now. I must, however, state that it would have been more appropriate for the petitioner to have impleaded the employer also in this case as the employer is certainly a proper party if not a necessary party to these proceedings.

In the result the order of the State Government, dated 11th July, 1962 (copy annexure 'B' to the writ petition), and the subsequent order of the State Government relating to the demand in dispute, which was communicated to the Union in letter, dated 20th September, 1962 (copy annexure 'D' to the writ petition), are held to be *non est* and I direct that a writ of *mandamus* may issue to the respondent to take into consideration the report of the Conciliation Officer as enjoined on the State Government under section 12(5) of the Act and to consider and decide afresh whether the State Government in exercise of the discretion vested in it under section 10(1)(a) of the Act should or should not make a reference of the alleged industrial dispute to a Labour Court or Tribunal, etc. Nothing stated in this judgment may be construed to indicate that this Court has even remotely suggested that reference should in fact be made by the Government in this case. It will be open to the appropriate Government to come to any independent decision it likes on this matter in accordance with law after a fresh consideration of the matter on

the principles set forth in this order. In the peculiar circumstances of the case, where the petitioner has succeeded on mere technicality, I would leave the parties to bear their own costs in these proceedings.

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INDER DEV DUA, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before S. S. Dulat and R. P. Khosla, JJ.

JANGLI AND OTHERS,—*Appellants*

versus

LAKHMI CHAND AND ANOTHER,—*Respondents*

L.P.A. 277 of 1962.

1965

May, 21st.

Punjab Pre-emption Act (I of 1913)—S. 15(1)(c)—Three joint owners of land selling it— Sons of two vendors bringing suit for pre-emption—Pre-emptors—Whether entitled to pre-empt the entire sale.

Held, that as respects village immovable property, right of pre-emption has no nexus to the quantum of share heritable from the vendor or vendors. The right of challenge appears to have been given to a class or group of persons bound together by the tie of relationship with the vendor. Before the amendment of the Punjab Pre-emption Act large number of persons in respect of their relative preferential proximity to the vendor had been selected. By the amendment, however, that group has been cut down to closer relationship by blood. Obviously, therefore, any one or more of that class or group could impugn the sale successfully and obtain possession on payment of the total sale price.

Appeal under clause 10 *of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Gurdev Singh, dated the* 20*th day of March,* 1962, *passed in R.S.A.* 1615 *of* 1960, *modified on cross-objections filed by the plaintiffs, that of Shri Ishar Singh Hora, Senior Sub-Judge with enhanced appellate powers, Gurgaon, dated the* 20*th July,* 1960, *to the extent that the decree of Shri Harnarain Singh Gill, Trial Court (Sub-Judge, 1st Class), Palwal, dated the* 27*th January,* 1960, *granting the plaintiffs a decree for possession of the land in dispute against the defendants and ordering the plaintiffs to deposit the amount of Rs* 3,000 *after deducting* 1/5*th of the sale price in the Court on or before* 15*th March,* 1960, *failing which the suit shall stand dismissed, be and the same is hereby restored. The parties are left to bear their own costs before the single Judge of this Court and both the Courts below.*

ROOP CHAND, ADVOCATE, for the Appellants.

D. N. AGGARWAL AND G. R. MAJITHIA, ADVOCATES, for the Respondents.