petitioners should not have been discriminated in the matter. Therefore, we hold that the petitioners holding L-14 licences before us are also entitled to the same relief which is being given to their counter-parts in the State of Uttar Pradesh.

(14) For the foregoing reasons, we allow these petitions and issue a writ of prohibition directing the respondents not to deduct/charge income tax from the L-13 licensees in view of the proviso to Clause (a) of Sub-section (1) of Section 44 AC of the Income Tax Act; and to implement the circular, dated 26th June, 1989, Annexure P-1. They are also directed not to charge/deduct income-tax on the excise duty payable by the petitioners, holding L-14 licences. No costs.

(15) Civil Misc. Nos. 39 of 1990 and 20963 of 1989 in CWP. 7161 of 1989 also stand disposed of accordingly.

R.N.R.

Before I. S. Tiwana & G. R. Majithia, JJ.

PUNJAB FINANCIAL CORPORATION, CHANDIGARH,—*Petitioner.*

versus

THE UNION TERRITORY, CHANDIGARH AND OTHERS,— *Respondents.*

Amended Civil Writ Petition No. 2584 *of* 1985.

7th June, 1990.

Industrial Disputes Act, 1947—*Ss.* 2(*a*)(*ii*) *and* 10—*Industrial Disputes* (*Central*) *Rules,* 1957—*Rl.* 2(*f*)—*Constitution of India,* 1950—*Art.* 239—*General Clauses Act* (*X of* 1897)—*S.* 3(60) *and* 8(*b*) (*iii*)—*Punjab Reorganisation Act* (31 *of* 1966)—*Ss.* 4 *and* 88—*Chandigarh* (*Delegation of Powers*) *Act,* 1987 (2 *of* 1988)—*S.* 4—*Industrial reference—Jurisdiction to refer disputes arising in Union Territory, Chandigarh—Appropriate Government—In relation to a Union Territory appropriate government is the Central Government—Where appropriate government is Central Government reference to Central Government shall be construed as reference to the administrator of U.T.—Administrator of U.T. competent to refer industrial dispute—Reference expressed in the name of the administrator but authenticated by subordinate authority does not amount to sub-delegation—Such exercise of power saved by the Chandigarh* (*Delegation of Powers*) *Act with retrospective effect—Retrospective saving is within legislative competence.*

Punjab Financial Corporation, Chandigarh *v.* The Union Territory, Chandigarh and others (I. S. Tiwana, J.)

Held, that for purposes of these industrial references under S. 10 of the Industrial Disputes Act, 1947 within the territorial limits of Chandigarh, the Central Government was the State Government and in view of S. 8(b)(iii) of the General Clauses Act, the Administrator of the Union Territory has to be taken to be the Central Government if his action was within the authority given to him.

(Para 3)

Held, that though the impugned references are expressed in the name of the Chief Commissioner/Administrator, Chandigarh, yet they have been signed or authenticated by one or the other Secretary of the Chandigarh Administration. Challenge as to sub-delegation does not need any deep consideration in view of the latest statutory provisions, i.e., Act No. 2 of 1988. The Chandigarh (Delegation of Powers) Act, 1987, wherein it is laid down that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge under any law in force in the Union Territory of Chandigarh may be exercised or discharged also by such officer or other authority as may be specified in this behalf by the Central Government or the Administrator by notification in the Official Gazette. Further, section 4 of this Act validates all earlier exercise of such powers or performance of duties by the Administrator.

(Para 5)

Held, that the petitioners argued that no power or authority as referred to in S. 4 of the Chandigarh (Delegation of Powers) Act, 1987 could be conferred on any officer or other authority with retrospective effect. However, they are not in a position to refer to any precedent or principle to show as to how this retrospectivity is beyond the prerogative of the legislature i.e., the parliament.

(Para 6)

Petition under Article 226/227 of the Constitution of India praying that :—

(i) *a writ in the nature of certiorari be issued quashing the reference Annexures P/2;*

(ii) *a writ in the nature of certiorari for any writ, direction or order quashing the award Annexure P/3 to the extent by which respondent No. 3 has been ordered to be reinstated with continuity of service without back wages;*

(iii) *any other writ, order or direction to which this Hon'ble Court may deem fit under this Hon'ble Court may deem fit under the facts and circumstances of the case may kindly be issued;*

(*iv*) *records of the case be summoned;*

(*v*) *issue of advance notices to the responaents may kindly be dispensed with;*

(*vi*) *filing of certified copies of Annexures P/1 to P/3 be exempted;*

(*v*) *costs of the petition be awarded to the petitioner.*

It is, further prayed that during the pendency of the writ petition **the** *operation of the award Annexure P/3 may kindly be stayed.*

R. S. Mongia, Sr. Advocate with J. S. Sathi, Advocate, *for the Petitioner.*

Ashok Bhan, Sr. Advocate with R. K. Garg, Advocate, *for the Respondents Nos.* 1 *and* 2.

J. C. Verma, Sr. Advocate, with Dinesh Kumar, Advocate, *for the Respondent No.* 3.

JUDGMENT

I. S. Tiwana, J.

(1) The common question that looms large in these 24 Civil Writ Petitions Nos. 2584 to 2586, 3017, 3185, 3214, 3215, 3774, 3853 and 4017 of 1985; 1278, 2192, 3373, 3417, 3456, 4027, 4042, 4048, 6296, 6600 to 6602 of 1986; 265 of 1987 and 4402 of 1986, relates to the validity of the respective references made under section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, the Act), by the Chief Commissioner/Administrator of the Union Territory, Chandigarh. It is conceded on all hands that in terms of section 10 read with section 2(a)(ii) of the Act the appropriate Government to make these references is the State Government. The Stand of the Petitioners is that the Administrator having been appointed by the President of India under Article 239 of the Constitution cannot arrogate to himself the functions of the State Government. This, according to their learned counsel is more so when he has not acted within the authorisation or authority delegated to him by the President,—*vide* notification No. S.O. 3269, dated 1st November, 1966 (copy Annexure R.1/1). The plea of the respondent authorities on the other hand is that as per section 3(60) of the General Clauses Act, 1897, the State Government in relation to a Union

Territory is the Central Government and accordingly all the powers of the State Government exercisable under any law, may it be a Central Act or a State Act, become exercisable by the Central Government and the Administrator being the representative of the latter, can validly exercise the same. Though in the light of section 3(60) of the General Clauses Act and Rule 2(f) of the Industrial Disputes (Central) Rules, 1957, as framed under the Act, the impugned references can safely be held to be strictly legal and valid, yet in order to answer the interlinked questions as debated, a reference to constitutional and various statutory provisions is necessary to the extent these are relevant.

(2) It is beyond dispute that the Union Territory of Chandigarh came into existence with effect from November 1, 1966, with the enforcement of the Punjab Reorganisation Act, 1966. As per section 4 of the same it was carved out of the territories of the erstwhile State of Punjab. Section 88 of this Act provides that the provisions of Part II which includes section 4 referred to above, shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extended or applied and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day, i.e., November 1, 1986. Article 239 of the Constitution which deals with the administration of a Union Territory, lays down that save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. Concededly the Administrator/Chief Commissioner is appointed by the President in exercise of this power. In this regard, the notification of the Central Government, Annexure R.1/1, referred to above, reads as follows:—

"MINISTRY OF HOME AFFAIRS

New Delhi, the 1st November, 1966. S.O. 3269.—Whereas under section 4 of the Punjab Reorganisation Act, 1966 (31 of 1986), the territories specified therein form the Union Territory of Chandigarh on and from the 1st day of November, 1966.

And whereas under seciton 88 of the said Act, the provisions of Part-II of the said Act shall not be deemed to have effected any change in the territories to which *any law in force immediately before the 1st day of November*, 1966, extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the said day:

And whereas the powers exercisable by the State Government under any such law as aforesaid are now exercise-able by the Central Government;

Now, therefore, in pursuance of clause (1) of Article 239 of the Constitution, and all other powers enabling him in this behalf, the President hereby directs that, subject to his control and until further orders, the Administrator of the Union Territory of Chandigarh shall, in relation to the said territory, exercise and discharge, with effect from the 1st day of November, 1966, the powers and functions of the State Government under any such law." (Emphasis supplied).

The case of the petitioners as already indicated is that neither the Administrator as representative or delegatee of the President of India can be styled as a State Government nor the above noted notification Annexure R.1/1 gives him any authorisation to perform any of the duties under the Act, as according to their learned counsel, he can act as the State Government only in pursuance of those laws the provisions of which stood effected by the operation of section 4 of the Reorganisation Act, 1966. In other words, the operation of the Act in this territory, i.e., the Union Territory of Chandigarh, is not effected in any manner by the enforcement of the 1966 Act. The argument is that the Act applied to the erstwhile State of Punjab by virtue of its own force and continued to so apply even after the formation of Union Territory of Chandigarh.

(3) So far as the first aspect of the matter as highlighted by the learned counsel for the petitioners is concerned, the same, to my mind, stands conculsively answered by the latest pronouncement of the Supreme Court, reported as *Goa Sampling Employees'*

Association v. *General Superintendance Co. of India Pvt. and others* (1). While examining the argument that in relation to a Union Territory there is no State Government and the Central Government, if at all can be said to be one, is the only Government and in the absence of a State Government, the Central Government will also have all the powers of the State Government, and therefore, the Central Government would be the appropriate Government for the purpose of making a reference, their Lordships, after analysing the various provisions of the Constitution, posed the question : "Would it be constitutionally correct to describe the Administration of a Union Territory as State Government ?" and answered it in the following manner. It clearly transpires that the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an Administrator appointed by him. Administrator is the delegatee of the President. His position is wholly different from that of a Governor of a State. Therefore, at any rate the Administrator of a Union Territory does not qualify for the description of a State Government. *Wherever the expression "State Government" is used in relation to the Union Territory, the Central Government would be the State Government.* Therefore, the Central Government is the appropriate Government. Clause (f) of Rule 2 of 1957 Rules framed under the Act further takes the matter beyond the pale of controversy when it says in relation to an industrial dispute in a Union Territory for which the appropriate Government is the Central Government, reference to the Central Government or the Government of India shall be construed as reference to the Administrator of the territory. It is thus abundantly clear that for purposes of these references, the Central Government was the State Government and in view of section 8(b)(iii) of the General Clauses Act, the Administrator of the Union Territory has to be taken to be the Central Government if his action was otherwise within the authority given to him.

(4) The second aspect of the argument of the learned counsel for the petitioners that the Administrator has not acted within his authorisation as notified,—*vide* Annexure R.1/1, appears to be

(1) A.I.R. 1985 S.C. 357.

equally meritless. The scope of the words 'any law' does not need to be reduced to any State law or State Act, meaning thereby to exclude the Central Acts. 'Any law' would essentially mean all State and Central Acts. The only implication of this notification is that all powers and functions under any law (as used in the earlier part of the notification) would henceforth, i.e., after the issuance of this notification, be performed by the Administrator of the Union Territory. The expression 'any such law' in the latter part of the notification only refers to the law under which the Administrator acts or is supposed to act.

(5) At one stage the learned counsel for the petitioners sought to agitate that in most of these cases though the impugned references are expressed in the name of the Chief Commissioner/ Administrator, Chandigarh, yet they have been signed or authenticated by one or the other Secretary of the Chandigarh Administration and, therefore, the same cannot be held to have been validly made. This submission of the learned counsel does not need any deep consideration in view of the latest statutory provisions, i.e., Act No. 2 of 1988, The Chandigarh (Delegation of Powers) Act, 1987, wherein it is laid down that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge under any law in force in the Union Territory of Chandigarh may be exercised or discharged also by such officer or other authority as may be specified in this behalf by the Central Government or the Administrator by notification in the Official Gazette. Further, section 4 of this Act validates all earlier exercise of such powers or performance of duties by the Administrator. It reads thus :—

> "Notwithstanding any judgment, decree or order of any court or tribunal or other authority to the contrary, whereby any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge under any law in force in the Union Territory of Chandigarh had been exercised or discharged by any officer or other authority before the commencement of this Act, such power, authority, jurisdiction or duty shall be deemed to have been validity and effectively exercised or discharged by such officer or other authority as if the provisions of sub-section (1) of section 3 were in force at all material times when such power, authority or jurisdiction was exercised or such duty was discharged and that officer or other authority had been specified as an officer

> or other authority by the Central Government or the Administrator in that behalf under the said sub-section, and accordingly, no suit or other proceeding shall be instituted maintained or continued in any court or tribunal or before other authority on the ground that such officer or other authority was not competent to exercise such power, authority or jurisdiction or to discharge such duty."

None of the learned counsel has been able to point out that any of the impugned references was authenticated by any officer or authority who was not specified to authenticate such references.

(6) Yet another feeble argument raised to add the second string to their bow by these learned counsel is that no power or authority as referred to in the above noted statute could be conferred on any officer or other authority with retrospective effect. However, they are not in a position to refer to any precedent or principle to show as to how this 'retrospectivity' is beyond the prerogative of the Legislature, i.e., the Parliament.

(7) No other point has been agitated by the learned counsel for the parties.

(8) For the reasons recorded above I find all these petitions to be devoid of merit and dismiss the same with costs which I determine at Rs. 1000 in each case.

R.N.R.