IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.18242 of 2001 and 18243 of 2001
and W.P.Nos.18256 to 18265,18293 to 18298,18343,
18344,18405,18406,18466,18467,18497,18498,18625 to 18628, 18646 to 1
8649,18694,19695,18697,18702 to 18705,18707 to 18710,18731 to 18734,1
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19754,19756,19774 to 1779,19781,19785 to 19790, 19799 to 19810, 19 813 to
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19261,19622,19459,19532,19533,19983,19984,20046 to 20048, 20052 to 20057,20063
to 20066, 20515 to 20520,20534, 20545 ,20546,20603,20604 of 2001

Premier Mills Ltd.,
Belathur, Hosur Taluk
Dharmapuri Department,
rep.by Deputy General Manager, .. Petitioner in
W.P.NOs.18242/2001

-Vs-

1. State of Tamil Nadu,
Labour & Employment Department,
Fort St. George,
Chennai 9.

2. Presiding Officer,
Industrial Tribunal,
Chennai 104.

3. Premier Mills National Textile
Employees' Union (INTUC),
Opp. to Premier Mills,
Bagalur, Belathur,
Hosur 635 124.

4. Premier Mills Anna Thozhilalar
Sangam (ATP),
Opp. to Premier Mills Bagalur,
Hosur 635 124.

5. Dharmapuri District Dravidar
Panchalai Thozhilalar
Munnetra Sangam (MLF,
86/A-1 Bharathi Nagar,
Hosur 635 189.

6. Dharmapuri District Dravidar
Thozhilalar Munnetra Sangam (LPF)
Opp. to Premier Mills, Bagalur,
Hosur 635 124.

7. Premier Mills National Labour
Union (NLO),
2/138-B, Teachers Colony,
Belathur, Hosur Taluk .. Respondents

For Petitioner : Mr.A.L. Somayaji,
Senior Counsel for
M/s.T.S. Gopalan & Co.

For Respondents 1-2: Mr. Muthukumarasamy
Additional Advocate General

Respondents 3-7: Ms. Vaigai

:J U D G M E N T

There are more than 1600 industrial establishments relating to Textile industry in the State. In June 1999, a Charter of demands was submitted by various labour unions of several industrial establishments. Subsequently on

20.3.2001 strike notice had been issued, but there was no strike. In the meantime discussions were carried on, firstly before the Joint Commissioner of Labour, Coi mbatore and subsequently before the Labour Commissioner, Chennai on several dates in the presence of representatives of various labour unions and representatives of some associations of the management such as South India Mills Association (in short SIMA), South India Small Spinners Association (in short SISSPA), the Dindigul Spinners Association, the Madurai Spinners Association. While such discussions were being carried on, strike notices were issued on behalf of the Unions and many workers in several industrial establishments struck work between 20.8.2001 and 22.8.200 1, but thereafter strike was called off. Further discussion having proved futile, the Conciliation Officer submitted the Conciliation Failure Report on 11.9.2001. The Government issued order G.O.Ms.No.688 dated 13.9.2001 making a reference in respect of some of the demands included in the Charter of demands. On the very same date, the Government issued G.O.Ms.No.690 under Section 10-B inter alia directing payment of varying amounts towards interim relief during the pendency of the industrial dispute. In one group of writ petitions legality of G.O.Ms.No.688 dated 13.9.2001 is questioned. In the other group of writ petitions, the validity of G.O.Ms.No.690 dated 13.9.2001 is questioned.

2. A common counter affidavit has been filed on behalf of the State Government. The Joint Action Committee which has got itself impleaded, has also filed a counter affidavit. In the counter affidavit filed on behalf of the Government, both the orders passed by the Government have been sought to be justified. Similar stand is taken in the counter affidavit filed on behalf of the Joint Action Committee.

3. Since many common questions were involved, both groups of writ petitions were heard together and are being disposed of by this common judgment.

4. On behalf of various petitioners, the matter has been argued inter alia by Mr.A.L. Somayajee, Mrs. Nalini Chidambaram, Senior Advocates and Mr.Sanjay Mohan, Mr. Vijay Narayan, Mr.R.S. Pandiyaraj, Mr.S. Jayaraman Mr. Balan Haridass, Mr. Elumalai and Mrs. Hema Sampath and Mr.Muthukumarasamy, Additional Advocate General and Ms. Vaigai have made submissions on behalf of the respondents.

5. Before dealing with the contentions, it is necessary to notice the relevant provisions of the Industrial Disputes Act, 1947 as amended in Tamil Nadu and the Tamil Nadu Industrial Disputes, 1958.

“ 10. Reference of disputes to Boards, Courts or Tribunals. - (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) . . .
(b) . . .
(c) . . .
(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule,

to a Tribunal for adjudication :

. . .
Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced :

. . .

10(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. . . .”

. . .
10B. Power to issue order regarding terms and conditions of service pending settlement of disputes. -

(1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-section (1) of section 10 and if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order of supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, they may, by general or special order, make provision -

(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as maybe specified in the order; and

(c) for any incidental or supplementary matter which appears

to them to be necessary or expedient for the purpose of the order: . . .

. . .
12.Duties of Conciliation officers.-(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.
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ÿÿÿÿÿÿÿ(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
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ÿÿÿÿÿÿ(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government (or an officer authorised in this behalf by the appropriate Government) together with a memorandum of the settlement signed by the parties to the dispute.
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ÿÿÿÿÿÿÿÿ(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for brining about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
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ÿÿÿÿÿÿÿÿ(5) If, on a consideration of the report referred to in subsection(4),the appropriate Government is satisfied that there is a case for referenceÿ to a Board,. Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.
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ÿÿÿÿÿÿÿÿ(6) A report under this section shall be submitted within fourteen days of the commencement of he conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.
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ÿÿÿÿÿÿÿÿÿProvided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.
. . .
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ÿÿÿÿÿÿÿÿ22. Prohibition of strikes and lock-outs.-No person employed in a public utility service shall go on strike in breach of contract-
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ÿÿÿÿÿÿÿÿ(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
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ÿÿÿÿÿÿÿÿ(b) within fourteen days of giving such notice; or
ÿ
(c) before the expiry of the date of strike specified in any such notice as aforesaid;or
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ÿÿÿÿÿÿÿÿ(d)during the pendency or any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
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ÿÿÿÿÿÿÿÿ(2) No employer carrying on any public utility service shall lick-out any of his workmen-
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(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
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ÿÿÿÿÿÿÿÿ(b) within fourteen days of giving such notice;or
ÿ
ÿÿÿÿÿÿÿÿ(c) before the expiry the date of lock-out specified in any such notice as aforesaid; or
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ÿÿÿÿÿÿÿÿ(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
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ÿÿÿÿÿÿÿÿ(3) The notice of lock-outÿ or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.
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ÿÿÿÿÿÿÿÿ(4) The notice of strike referred to in sub-section(1)shall be given by such number of persons to such person or persons and in such manner as may be prescribed.
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ÿÿÿÿÿÿ (5) The notice of lock-out referred to in sub-section(2) shall be given in such manner as may be prescribed.
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ÿÿÿÿÿÿÿ(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section(1)or gives to any persons employed by him any such notices as are referred to in sub-section(2),he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

. . .

29-A. Penalty for failure to comply with an order issued under section 10-B. - Any person who fails to comply with any provision contained in any order made under sub-section (1)of section 10-B, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year and with fine.

. . .

36. Representation of parties. -
(1) . . .
(2) An employer who is party to a dispute shall be entitled to be represented in any proceeding under this Act by-
(a) an officer of an association of employers of which he is a member
. . .

Rule 36. Summons- (1)Summons issued by a Conciliation Officer, Board, Court, Labour Court or Tribunal shall be in the following form : -
Summons to the parties to the dispute – Form "G".
Summons to witnesses to appear and give evidence – Form "H"
Summons for production of documents – Form "I".
(2) Whenever the validity of the standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) is challenged, a Labour Court or Tribunal may summon the certifying officer as defined in that Act and call for the production of any documents in his possession.

37. Service of summons or notice. -- (1) Where there are numerous persons as parties to any proceedings before a Conciliation Officer, Board, Court, Labour Court or Tribunal or an Arbitrator, and such persons are members

of any trade union or association, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the union or association shall be deemed to be service on persons.

. . .

47. Right of representatives. -- The representatives of the parties appearing before a Board, Court, Labour Court, Tribunal or an Arbitrator, shall have the right of examination,
cross-examination and re-examination and addressing the Board, Court, Labour Court, Tribunal or Arbitrator when any evidence has been called.

6. Since the invalidity of the reference is a common ground of attack in both the groups of writ petitions, it is appropriate to deal with the said question first.
7. It has been contended that in view of the existence of valid settlement in several industrial establishments, there was no justification for making a reference. It has been submitted that a reference can be made under Section 10(1) only if a dispute is in existence or a dispute is apprehended and since settlements are in force in respect of many of the establishments, no reference could have been made as it cannot be said that any dispute was in existence or even apprehended.

8. It is true that a reference under Section 10(1) of the Act can be made only when an industrial dispute exists or is apprehended and as such it is not expected of the Government to make reference under Section 10(1) in respect of Industrial establishments where settlements are still in operation.

This defect has been sought to overcome by the learned Additional Advocate General representing the State by making a submission to the effect that in the present case reference was not establishmentwise but it is industrywise. He has submitted that when an industrywise reference is made, it is not desirable to exclude some of the establishments and at any rate if the Industrial Tribunal finds that in respect of some of the industrial establishments valid settlements are subsisting, the Industrial Tribunal can always take appropriate action by answering the question in appropriate manner. In support of the aforesaid contention, the learned Additional Advocate General and Ms. Vaigai representing the Joint Action Committee have placed reliance upon the decision of the Supreme Court reported in 1987(1)LLJ 105 (TAMIL NADU JAC AND TEXTILE TRADE UNION v. GOVERNMENT OF TAMIIL NADU AND OTHERS)

9. A perusal of the aforesaid decision makes it clear that when there is industrywise reference and not establishmentwise reference, it is impermissible to exclude some industrial establishments by the Government on the ground that no dispute is in existence in such industrial establishements and the matter should be left to be decided by the Industrial Tribunal.

10. The next question relates to lack of notice in the conciliation proceedings. Learned counsels for the petitioners have vehemently contended that before the Conciliation Officer many of the Managements had not been represented and notices had not been issued to them. It has been submitted that many of the industrial establishments are not members of any Associations and notice should have been issued to such management and as such the conciliation proceeding was invalid. It has been further submitted by them that in fact the representatives of SIMA or SISSPA or other Associations had made it clear that they were not authorised to represent any of the establishments and notice should be sent individually to various industrial establishments. In this connection, they have placed reliance upon the provisions contained in Section 36(2) of the Industrial Disputes Act and contended that only after proper notice is served, an employer is entitled to be represented by an officer of the Association, which is a matter of own volition of the employer, but there is no authority to thrust upon such employer any particular association by issuing notice to such association and not to the employer concerned. They have also placed reliance upon Rule 46 of the Tamil Nadu Industrial Disputes Rules to contend that the person can

represent only by filing appearance in the prescribed form and in the absence of any such authorised representative, the entire conciliation proceedings has to be held invalid.

11. Learned Additional Advocate General has combated these questions by submitting that notices had been issued in accordance with Rule 3 6 to the Associations representing various mills and it was not practicable to sent notice to all the mills individually. He has further submitted that absence of notice to each individual mill is immaterial in view of the fact that strike notice had been issued in respect of an industry which was a public utility industry and as such as envisaged under second proviso to Section 10(1), the Government was bound to make a reference notwithstanding pendency

of any conciliation proceeding. He has therefore submitted that even assuming that in the conciliation proceeding there was some technical defect of nature indicated by the petitioner, that is of no consequence as the reference was bound to be made as the notice under Section 22 of the Act had been issued in respect of textile industry which relates to public utility service.

12. Section 36 of the Industrial Disputes Act relates to the question of representation of the parties. This provision does not contemplate the manner in which notice is to be served on a party. Rules 36 and 37 relate to summons and service of summons. Rule 37(1) specifically contemplates that where there are numerous persons as parties to a proceeding and such persons are members of a trade union or Association, the service of notice on the Secretary or on the Principal Officer, where there is no Secretary of the union or the association, shall be deemed to be valid service. After notice is served in the manner contemplated, it is open to the party to be represented in the manner envisaged in Section 36. Rule 46 prescribes the actual manner in which a party is to be represented. Therefore, if summons are served on the secretary or principal officer of the association in the manner prescribed in Rule 37, there is no necessity for any further notice. However, if a particular mill is not a member of the association, obviously notice as contemplated under Rule 37(1) would not be sufficient and the notice has to be served in the prescribed manner. Examined in the light of the above discussion, the submission made on behalf of some of the petitioners that notices of the conciliation proceedings had not been properly issued may appear to be justified atleast in respect of mills/establishments which were not members of any Association at the relevant time, but the absence of such notice would not vitiate the order of reference, though the conciliation proceeding itself may not be of any effect so far as such mills or establishments are concerned.

13. The conclusion of conciliation proceedings as envisaged under Section 12 of the Act is not a sine qua non for making a reference. Even though the procedure contemplated under Section 12(5) is one of the methods for making a reference, it is not the only method. The appropriate Government may form necessary opinion on the basis of the failure report or even otherwise. Therefore, even assuming that there was any defect in the conciliation proceedings in the sense that notices had been issued only to the association and some of the mills were not members of any such association, that will not vitiate the order of reference. In this connection, the decision of the Supreme Court in 1996(II)LLJ 879 (SULTAN SINGH v. STATE OF HARYANA) is applicable and absence of notice or opportunity of hearing is of no consequence so far as the validity of the reference is concerned.

14. Learned counsels appearing for the petitioners have submitted that Joint Action Committee had no legal standing to represent the workers as it is not a registered trade union and as such the proceedings before the conciliation authority is invalid. In view of the fact that dispute at the instance of workman was required to be referred, it is unnecessary to deal with this question, particularly at the instance of various mill owners. Moreover, the materials on record indicate that members of the Joint Action Committee were merely the office bearers of the trade union of various mills.

15. It is next contended that there was no justification in the reference to make two classifications ignoring the classifications earlier made and this amounts to hostile discrimination. This contention is bereft of any substance. The question as to whether any other classification should be adopted or not is a matter to be decided by the Tribunal on merits and it would not be proper for the High Court to express any opinion at this stage.

16. A contention has been raised by several counsels appearing for the petitioners that some of the petitioner establishments have become Sick Industries and are covered under the Sick Industries Act and therefore no reference should have been made in respect of such sick industries. This question is again premature. If ultimately any award would be passed saddling any liability on any such sick industry, whether such award can be enforced or not is a matter to be decided at that stage in appropriate proceeding and it would not be proper to hold that the reference itself is bad because some sick industries are also included in the reference.

17. Learned counsels appearing for some of the petitioners have submitted that in respect of many of the establishments there was no agitation nor any demand had been made by any of the workmen and therefore, there was no justification nor necessity for making any reference in respect of such establishments. As already noticed, the reference purports to be one under Section 10(1) read with 10(5) of the Act. Even assuming that in respect of some establishments there is no dispute, such establishments can be included in the reference by virtue of Section 10(5). Therefore, this submission is also of no use to the petitioners.

18. Relying upon the decision of the Chief Justice Mr. Chagla in 195 5 (1) LLJ 555, it has been submitted that question of standardisation of wages is a misnomer where no minimum wages has been fixed and the main dispute in the reference being standardisation of wages, the reference itself is illegal and uncalled for. The aforesaid decision may have some relevance at the time of disposal of the reference itself, but cannot be pressed into service at the time of considering the validity of the reference at this nascent stage.

19. For the aforesaid reasons, the writ petitions challenging G.O. Ms.No.688 dated 13.9.2001, referring the disputes to the Industrial Tribunal have no merit and are liable to be dismissed.

20. In the other group of writ petitions, the validity of the notification of the Government issued under Section 10-B is being questioned. One of the main ground of attack is the alleged invalidity of the reference under Section 10(1) itself. Since the reference has been upheld, it is now necessary to deal with other contentions relating to invalidity of the notification issued under Section 10-B of the Act.

21. A bare perusal of Section 10-B, which has already been extracted, makes it clear that the following aspects should be satisfied for issuing order regarding terms and conditions of service pending settlement of disputes.

(1) Industrial dispute has been referred by the State Government to Labour Court or Industrial Tribunal under Section 10(1).
(2) The Government should be of the opinion that it is necessary or expedient for passing such order for securing:
(a) public safety or convenience
(b) for maintenance of public order
(c) for maintenance of supplies and services essential to the life of the community
(d) for maintaining employment or industrial peace in the establishment concerning which such reference has been made.
The circumstances indicated (a) to (d) above are not cumulative.

22. In 1961 SC 420 (STATE OF UTTAR PRADFESH AND OTHERS Vs. BASTI SUGAR MILLS CO. LTD.) and in 1979 (2) SCC 88 (BASTI SUGAR MILLS CO. LTD. Vs. STATE OF UTTAR PRADESH AND ANOTHER) it has been observed by the Supreme Court while dealing with somewhat the similar provisions contained in Uttar Pradesh Act that these orders are administrative orders passed keeping in view the exigencies of circumstances.

23. Learned counsels appearing for the petitioners have submitted that an order under Section 10B is contemplated only where there is a reference under Section 10(1) of the Act and not regarding the establishments which become part of the reference by virtue of Section 10(5) of the Act. It has been submitted that in the present case the reference purported to be one under Section 10(1) and 10(5) without specifying the establishments in respect of which reference was under Section 10(1) or under Section 10(5) as the case may be. To combat this submission, the learned counsels appearing for the State and the workmen have submitted that reference is one under Section 10(1) and reference to Section 10(5) in the order of the Government is a mere surplusage. They have submitted that this a reference not in respect of any particular establishment, but reference in respect of entire industry under Section 10(1) of the Act. This rival submissions made by the counsels require careful consideration.

24. As already noticed, one of the pre-requisite is that an industrial dispute has been referred under sub-section (1) of Section 10. In the present case, the reference is purported to have been made under Section 10(1) read with Section 10(5). The vital difference between the provisions contained in Sections 10(1) and 10(5) is to the effect that in the case of former, reference can be made when a dispute is existing or is apprehended, whereas in the latter case action can be taken by including in the reference under Section 10(1) such establishment, group or class of establishments if the appropriate Government is of the opinion that the dispute is of such a nature that any other establishment or group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute. A conjoint reading of Sections 10(1), 10(5) and 10-B makes it clear that an order under Section 10B can be made only in respect of an establishment covered under Section 10(1). In other words, if an establishment is included

in the reference by virtue of Section 10(5) only because such an establishment is likely to be interested in or affected by the dispute covered under Section 10(1), no order as contemplated under Section 10-B can be made in respect of the establishment coming within the arena of dispute merely because of Section 10(5).

25. In the present case, the reference itself purports to be under Section 10(1) read with Section 10(5). Even though such a composite reference can be made without specifying which establishment comes under Section 10(1) and which establishment is brought within the arena of the dispute merely because of Section 10(5), an order under Section 10-B cannot be made applicable to all the establishments unless it is specified which establishment is coming under Section 10(1) of the Act.

26. Submissions of the counsels appearing for the State and for Joint Action Committee to the effect that the entire reference itself can be taken to be a reference under Section 10(1) is difficult to accept. It is true that law is well settled that if power is conferred on a particular authority to take a particular action, merely because a wrong source of power is referred to in the order, exercise of power if otherwise permitted is not vitiated. However, such an analogy cannot be made applicable in the present case where the Government has after prolonged deliberations made a reference under Section 10(1) read with Section 10(5). It is obvious that such an order has been passed because the Government was conscious of the fact that in respect of many of the establishments there was neither any dispute nor apprehension of any dispute and only to overcome such a difficulty, the Government has deliberately taken a decision to make a composite reference under Section 10(1) read with Section 10(5). The reference to Section 10(5) in the order of Reference is neither accidental nor inadvertent, but is deliberate and it is not open to the counsel representing the State to take a stand which is contrary to the conscious decision of the Government. As a matter of fact in the counter affidavit filed on behalf of the Government there is not even a faintest whisper that the reference was made only under Section 10(1) and Section 10(5) had been mentioned in the notification inadvertently.

27. Before taking action under Section 10-B of the Act, the Government is required to form an opinion as envisaged in the provision itself. Formation of such an opinion is a condition precedent for exercising the power. In case where requisite opinion is formed, the High Court cannot substitute its opinion for the opinion formed by the Government. Even though the High Court cannot sit in appeal over such an opinion, it can examine if in fact there has been any formation of the requisite opinion on the relevant aspect or if the order has been passed mechanically without application of mind.

28. The relevant paragraph in the Government Order is to the following effect:

“ . . . Whereas the Government by order G.O.(D) No.688, Labour and

Employment, dated 13thSeptember 2001have referred certain demands raised by the workmen for adjudication by the Industrial Tribunal, Chennai;
(2) And whereas the Government are of the opinion that for the purpose of maintaining supplies and services essential for the life of the community and for maintaining employment and Industrial peace in the aforesaid Cotton Industry and Pending adjudication of the reference by the Industrial Tribunal, it is necessary to make an order. ...”

In the impugned notification some of the provisions of Section 10B have been merely extracted. Mere magic incantation of the expression contained in Section 10-B would not be sufficient to come to the conclusion that necessary opinion has been formed. In the counter affidavit filed on behalf of the State nothing has been indicated as to how in the opinion of the Government it was necessary to do so for maintaining supplies and services essential to the life of the community and for maintaining employment or industrial peace in the establishment concerning which such reference has been made. It is not disputed that action under section 10-B is not to be taken as a matter of course, but with a view to meet an emergent situation. The justification for passing order under Section 10-B is indicated in paragraph 19 of the counter affidavit filed on behalf of the State Government. Shorn of all verbosity, the justification as discernable from the counter is to the following effect :

“ . . . In view of the fact that the strike resorted to by the textile mill workers was affecting the law and order position in the State, and was causing loss to the industry and also loss of revenue to the Government and was also causing damage to the economy of the country, the Government thought that the recurrence of such strike in the textile industry is not conducive to the well being of the economy of the country and thought it fit to invoke the provisions of section 10 of the Industrial Disputes Act and referred some of the demands raised by the workmen for adjudication by the Industrial Tribunal Chennai and also invoked the power vested in then under section 10B of the Industrial Disputes Act and ordered the textile mills in the State to pay interim relief to the workmen employed by them. The Government also prohibited the continuance of any strike or lock out in the textile industry. . . .”

29. From a bare perusal of the impugned notification, as compared with the assertions made in the counter-affidavit in justification of the impugned order, it is apparent that the emphasis in the affidavit is on the fact that the strike resorted to by the textile mill workers was affecting the law and order position in the State and was causing loss to the industry and also loss of revenue to the Government and was also causing damage to the economy of the country, the power under Section 10-B was invoked. In the impugned notification it has been recited that the Government was of the opinion that order under Section 10-B should be issued “ for the purpose of maintaining supplies and services essential for the life of the community and for maintaining employment and industrial peace in the aforesaid cotton industries.” To say the least, the assertions made in the counter affidavit do not purport to justify at all the opinion as reflected in the impugned notification. The assertions in the counter affidavit give the impression as

if the Government thought it fit to pass order for maintaining public order or for securing public safety as highlighted by reference to the agitations in the shape of road block, dharna, etc. However, the order is not apparently based on such conclusion. The counter affidavit does not throw any light as to how it had come to the conclusion that it was necessary or expedient to pass order under Section 10-B for maintaining supplies and services essential for the life of the community or as to how the order was necessary for maintaining employment in cotton industry. Even the counter has not indicated as to how the proposed order was aimed at maintaining industrial peace in the establishment (or even establishments) in respect of which reference was made under Section 10(1) of the Act.

30. It is true that appropriate decision has to be taken by the Government on the basis of subjective satisfaction, but when such action is challenged as based on no satisfaction, it is the duty of the Government to point out the basic materials on the basis of which order under Section 10B was passed. There cannot be any doubt that an order under Section 10-B is not to be passed for the mere asking or with a view to give effect to a particular declaration or theory of any official or functionary. The power under Section 10-B is to be exercised with due consideration and circumspection and it is not expected to be exercised in arbitrary manner. If the pre-requisite conditions are existing, the power to issue order is absolute. The fact that very wide powers have been conferred itself implies that such power must be exercised with due care and caution.

31. Learned counsels appearing for various petitioners have contended that an order under Section 10B gives rise to civil consequences and even penal consequences as contemplated under Section 29A of the Act and as such the Government should not have passed the order without complying with the principles of natural justice and the principle of audi alteram partem should have been followed by the Government.

32. Learned counsel appearing for the State as well as for the Unions have submitted that an order under Section 10B which is intended to meet a particular emergent situation need not be preceded by a show cause or opportunity of being heard as by giving such opportunity may render the provision ineffective. It has been submitted that the Government is vested with the discretion to take its own decision on the basis of the available materials and the Government does not purport to decide any right of either parties. The measure is intended to be a temporary action with a view to avoid certain contingencies and it would be impracticable to read into the provisions the principles of natural justice.

33. It has been submitted by Ms.Vaigai on behalf of the workmen that in an administrative action of general nature, application of principles of natural justice cannot be insisted upon. For the aforesaid purpose, reliance has been placed on the decisions reported in 2002(2)SCC 7 (STATE OF PUNJAB vs. TEHAL SINGH), 200(2) SCC 333 (BALCO EMPLOYEES UNION vs. UNION OF INDIA AND OTHERS) and 2002 (3) SCC 146 (UNION OF INDIA vs. O. CHAKRADHAR).

34. In 2002(2) SCC 7, the question of establishing Grama Sabha at a

particular place was in issue. It was held that such administrative decision is legislative in nature and it is not necessary to follow the principles of natural justice.

35. In 2002(2) SCC 333, the question was relating to disinvestment in a Government company. The Supreme Court observed that even though the employees are likely to be affected by disinvestment, since the question of disinvestment is a matter of policy, there is no scope for insisting upon compliance of principles of natural justice.

36. In 2002(3) SCC 146, it was found that there was widespread irregularity in the matter of recruitment and all such appointments on the basis of irregular selection process were cancelled without issuing any individual notice to any of the employees concerned.

In the aforesaid context, it was observed :
" . . . If the mischief played is so widespread and allpervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance. . . ."

37. The administrative action in the present case cannot be characterised as legislative in nature nor the observation of the last decision cited is applicable to the facts of the present case. The ratio of the aforesaid decision is not applicable.

38. Learned counsel has also placed reliance upon the decision reported in 1979(1) LLJ 391 (EENADU PRESS WORKERS UNION AND ANOTHER v. GOVERNMENT OF ANDHRA PRADESH AND ANOTHER) which was subsequently followed in 1995(3) LLJ Supp. 491 (Bombay) (DIG VIJAY COMPANY LIMITED v. STATE OF MAHARASHTRA AND OTHERS)

39. In the first decision, question relating to order passed by the Government under Section 10(3) of the Industrial Disputes Act prohibiting continuance of strike in connection with dispute has been referred. It was observed :
" . . . We are not inclined to agree with the contention of the petitioners that before an order is passed under Section 10(3) a notice to show cause why such an order should not be passed should be given to the employees of the management as the case may be. It is true that right to strike is a valuable right of the employees, but at the same time it is well settled that it is not a fundamental right. It is true that as far as possible where the rights of a party are affected by an order, the affected party must on grounds of natural justice, be given an opportunity to state its case and to show cause against well recognised exceptions to the application of the principles of natural justice. As has been repeatedly observed the requirements of natural justice depend upon the circumstances of the case, the nature of the enquiry and the subject-matter that is being dealt with, etc. and no hard and fast rule can

be laid down. . .”

It was further observed :

“ The Industrial Disputes Act is designed to provide a machinery for a just and equitable settlement of disputes by adjudication, by negotiation and by conciliation etc. instead of by a trial of strength by strikes and lock-outs. Section 10(1) enables the Government whenever an industrial dispute exists or is apprehended, to refer the dispute to a Board, the Court of enquiry, Labour Court or to a Tribunal for adjudication. Section 10(3) provides that where an industrial dispute has been referred, the appropriate Government may by an order prohibit the continuance of any strike or lock out in connection with such dispute. The main object of Section 10(3) is to maintain an atmosphere of peace and calm when the matter referred to is being adjudicated upon by the Tribunal or the Labour Court. It will not be conducive to industrial peace if side by side with the adjudication of the dispute by the Tribunal, a strike or lock-out continues. It would be like having a true and a war at the same time. It was, therefore, felt by the Legislature that the Government which refers the dispute for adjudication should be empowered to prohibit the continuance of a strike or lock-out in connection with such dispute. If it is to be held that in such circumstances the Government is bound to issue a show-cause notice to the parties, as to why they should not prohibit the continuance of strike or lock-out, the very object of Section 10(3) would be frustrated. If a notice is given to the employees to show-cause against the continuance of a strike, the management would also insist upon an opportunity to show cause that the strike should be prohibited. Similarly in the case of lock-out, an opportunity to the management would also involve, an opportunity to the employees to rebut the case of the management. In the result the Government will be faced with the responsibility of deciding the respective cases to some extent even though the main dispute is pending before the Tribunal for adjudication. The most important step is to first prevent the continuance of the strike or lock-out and the very object of Section 10 (3) would be defeated if it is held that it is incumbent on the Government to issue notices to the employees and the management and to hear them, which would lead to considerable delay in passing the order prohibiting the continuance of the strike. In this connection it is to be noticed that even when a reference is made under Section 10(1) it is not contemplated that the Government should give an opportunity either to the management or to the employees to state their case before making such reference. Section 12(5) provides that if on a consideration of a report by the Conciliation Officer that the Government is satisfied that there is a case for reference, it may make such a reference and if it does not make a reference, it shall record and communicate to the parties concerned its reasons therefor. Here again, the only safeguard while refusing to refer is that the Government should record its reasons and communicate them to the parties its reasons. There is no requirement that it should give an opportunity to the parties before making an order refusing to refer. Even in a case where the Government decided not to refer in the first instance and subsequently changed its mind, it has been held in Srikrishna Jute Mills v. Govt. of A.P.,(1977-I L.L.J. 363); (1977)L.I.C.988 (Andhra Pradesh) that no opportunity or notice need be given to the parties. If in such a case there is no requirement of an opportunity

being given, we fail to see why it should be held that an opportunity should be given at the time when an order under Section 10(3) is passed prohibiting a strike or lock-out, especially when such an order is to be made expeditiously in the interest of industrial peace. With respect we do not agree with the decision of the Kerala High Court in A.K. Kaliappa Chettiar and Sons v. State of Kerala, (1970-I L.L.J. 97), that an opportunity has to be given before an order under Section 10(3) is passed. Further in our view that decision is clearly distinguishable as it relates to a case of lock-out. Unlike the right to strike, the right to closure of business is a fundamental right. Vide Workmen of I. L.T.D. v I.L.T.D. Co., Guntur, A.I.R. 1970 S.C. 860: (1970) L.I.C. 755 and Express News Papers (P) Ltd. v. Workers, A.I.R. 1963 S.C. 569 . Hence the case of a lock-out stands on a different footing from the case of a strike. . . .”

40. The observations made in the context of need to take urgent action under Section 10(3) regarding prohibition of strike or lock-out may not be strictly applicable when the question is relating to payment of some interim relief as in the present case. As rightly observed in the decision of Andhra Pradesh High Court as well as in the decisions reported in 1978 S.C. 597 (MENAKA GANDHI v. UNION OF INDIA) and 1 978 S.C. 851 (MOHINDER SINGH Vs. CHIEF ELECTION COMMISSIONER), which two decisions were distinguished by Andhra Pradesh High Court, there cannot be any hard and fast rule regarding the scope and application of the principle of natural justice as it depen ds upon the facts and circumstances of each case. The urgency to pass an order prohibiting strike or lock-out cannot be equated with necessity to pass order relating to payment of interim relief. Therefore, even assuming that no notice is contemplated for taking action under Section10(3) relating to strike or lockout, the same principle cannot be extended to the question of payment of interim relief.

41. The learned Additional Advocate General relying upon the decision of the Karnataka High Court reported in 1997(I) LLJ 95 (KANORIA INDUSTRIES v. STATE OF KARNATAKA AND OTHERS) Except stating that the Government is exercising sovereign function while passing orders under Section 10-B, no other reason has been given in the said decision. I do not see how issuing a direction for payment as interim relief can be characterised as exercise of sovereign power. With respect, I am unable to persuade myself to agree with the opinion expressed in the said decision.

42. Learned counsel appearing for the petitioners had submitted that while considering the question of grant of payment of interim relief, if opportunity would have been given, the concerned employers/ establishments would have impressed upon the appropriate authority the fact that such employer or establishment would not be in a position to pay any amount. In other words, they have submitted that the question of payment of interim relief is required to be considered in the context of financial health of a particular establishment.

43. This submission has been refuted by Ms. Vaigai by placing reliance upon the decision reported in A.I.R. 1985 SC 860 (THE MADHYA PRADERSH IRRIGATION KARAMCHARI SANGH v. STATE OF MADHYA PRADESH AND

ANOTHER).
She has submitted that the question of financial competence of a company or establishment to pay interim relief is not a matter to be considered by passing such order under Section 10-B of the Act.

44. In the case cited supra, the Government has refused to refer a dispute mainly on the ground that Government was not in a position to bear additional burden and that the grant of special allowance claimed cannot be granted and similar demands by other employees would be made. The High Court had refused to interfere in the matter and the Supreme Court while allowing the appeal and directing that reference should be made :

" . . . When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi judicial Tribunal by an administrative authority, namely the Appropriate Government. . . . To say that granting of dearness allowance qual to that of the employees of the Central Government would cost additional finance burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. . . ."

45. The ratio of this decision cannot be made applicable in the present circumstances. By merely making reference, no financial burden was involved, whereas by making a direction regarding interim relief, some financial liability has been fastened on the employer/ establishment and by virtue of Section 29A of the Industrial Disputes as amended in Tamil Nadu, failure to comply with such a direction is punishable. Therefore, even though question of financial capability is of no consequence, at the time of making the reference, financial capability has got some bearing in the matter relating to direction under Section 10B of the Act.

46. Keeping in view the fact that non-compliance of the order relating interim relief under Section 10-B is fraught with serious consequences, it would be appropriate to hold that before passing such order under Section 10-B principles of natural justice should be followed. Obviously what would be the mode of compliance with the principles of natural justice would depend upon the facts and circumstances of a particular case. For example, if urgent action is required to be taken, the requirement relating to compliance of principles of natural justice would be at the barest minimum and time permitted may be minimal. It would be neither desirable nor possible any extension, what should be the manner of compliance of principles of natural justice.
47. In the present case, it is true that some of the associations representing many establishments had been issued notice during conciliation proceedings, but it is not disputed that many of the establishments were not members of such associations and had not been given any notice. For the aforesaid reason also the order becomes vulnerable.

48. It has been contended that since specific provision has been made in Section 10B(1)(b)in respect of public utility industries, the

provisions contemplated under Section 10B(1)(a) are not applicable to any public utility industry. Such submission does not appear to be tenable. Even though the provisions contained in Section 10B (1)(b) are specifically applicable to public utility industry, there is nothing in other provisions to hint that other provisions are not applicable to all industries including public utility industry and the provisions cannot be considered to be mutually exclusive.

49. A question was raised that where ultimately no relief is granted in the industrial dispute to the concerned workman, what would happen to the amount which is paid to the workmen by virtue of the order passed under Section 10B. The counsels appearing for the State as well as Joint Action Committee have submitted that even then the Tribunal has got the implied authority to direct refund of the amount if ultimately no benefit is conferred on the workmen in the award. Such submission appears to be reasonable and acceptable. Even if ultimately no benefit is conferred to the workmen, the general principle of restitution would be available and the Tribunal will not be powerless to give the benefit given necessary direction to adjust the Government under Section 10B from other emoluments admissible.

50. It now transpires that the Government has already constituted a Special Tribunal to deal with the industrial dispute. It goes without saying that the Special Tribunal shall deal with the matter including any interim application as expeditiously as possible in accordance with law without being influenced by any observations made in the judgment and the fact that the writ petitions challenging the validity of G.O.Ms.No.690 have been allowed or other writ petitions challenging the validity of G.O.Ms.No.688 are dismissed should not be considered as expression of any opinion on the merits which are to be decided in the dispute itself.

51. In the result, the writ petitions calling in question G.O.Ms. No.690 dated 13.9.2001, so far as they relate to direction regarding interim relief and lumpsum payment, are allowed and the writ petitions challenging G.O.Ms.No.688 dated 13.9.2001 are dismissed. There would be no order as to costs in any of the writ petitions. Consequently, all the Miscellaneous petitions are disposed of.

Index : Yes
Internet : Yes
dpk

To

1. State of Tamil Nadu,
Labour & Employment Department,
Fort St. George,
Chennai 9.

2. Presiding Officer,
Industrial Tribunal,

Chennai 104.

3. Premier Mills National Textile
Employees' Union (INTUC),
Opp. to Premier Mills,
Bagalur, Belathur,
Hosur 635 124.

4. Premier Mills Anna Thozhilalar
Sangam (ATP),
Opp. to Premier Mills Bagalur,
Hosur 635 124.

5. Dharmapuri District Dravidar
Panchalai Thozhilalar
Munnetra Sangam (MLF,
86/A-1 Bharathi Nagar, Hosur 635 189.

6. Dharmapuri District Dravidar
Thozhilalar Munnetra Sangam (LPF)
Opp. to Premier Mills, Bagalur,
Hosur 635 124.

7. Premier Mills National Labour
Union (NLO),
2/138-B, Teachers Colony,
Belathur, Hosur Taluk

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