IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.8381 of 1988
Date of Decision:31.10.2008

HMT Limited, Pinjore, Tehsil Kalka, District Ambala

.....Petitioner

Vs.

The State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE HARBANS LAL

Present:- Mr. R.K. Chhibbar, Senior Advocate with
Ms. Meenu Sharma, Advocate for the petitioner.

Mr. J.C. Verma, Senior Advocate with
Ms. Meenakshi Verma, Advocate for respondent No.2.

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HARBANS LAL, J.

This petition has been moved by HMT Limited, Pinjore, Tehsil Kalka, District Ambala under Articles 226/227 of the Constitution of India for quashing the notification dated 26.8.1988 Annexure P.8 and notice Annexure P.9 referring the industrial dispute to the Labour Court, Ambala, (respondent No.3) and to restrain Nasib Singh, respondent since deceased (respondent No.2) and respondent No.3 to proceed with the said reference and to stay the operation of Annexure P.8 as well as Annexure P.9.

The facts giving rise to this petition are that Nasib Singh since deceased, respondent- workman was a turner, who joined the service of the petitioner- Company on 26.11.1962 in pursuance of the appointment letter dated 8.11.1962. On 21.2.1968, the workman was charge-sheeted. On

20.2.1968 at about 1:30 P.M., he collected almost all the workmen of the Turret Section in the cabin of the Foreman to discuss the promotion cases of three workmen and started arguing with the former who told him to go back to his workplace but he refused to do so. That this amounts to wilful insubordination of the lawful and reasonable orders of the superior, which is a misconduct under Standing Order No.21.101. During the course of his (workman) arguments with the Foreman, he misbehaved and used abusive language towards the latter, which amounts to misconduct under Standing Order No.21.109. When the inquiry into these charges was still going on, another charge-sheet dated 27.5.1969 was served upon him. He was further charge-sheeted in terms of petitioner's letter of charge No.PLO/ 7.32 dated 21.2.1968 as well as letter No.PLO/700/1212 dated 27.6.1968. On 27.5.1969, he was asked to give an explanation with respect to the charge-sheet. An Inquiry Committee was constituted. After holding full fledged inquiry, the Inquiry Committee gave its report, copy of which is Annexure P.1. On 9.6.1971, the Deputy General Manager, the competent authority dismissed the workman from service. After his dismissal, the workman issued the demand notice, which was sent to the Conciliation Officer, who started conciliation proceedings under Section 12(2) of the Industrial Disputes Act, 1947 (for brevity, `the Act') but later on, the workman absented himself and withdrew from the proceedings. He filed a suit on 8.10.1971 for declaration that the order dated 9.6.1971 as well as the inquiry proceedings were illegal. The suit was decreed by the Sub-Judge First Class, Ambala on 24.10.1975. The appeal preferred there against was accepted on 3.3.1977 by the Court of Senior Subordinate Judge (exercising the enhanced

appellate powers) at Ambala and set aside the judgment/ decree of the trial Court. A Regular Second Appeal No.1121 of 1977 was filed. The same was dismissed on 20.2.1986 by holding that the workman having at an earlier stage chosen his remedy under the industrial law could not institute the present suit and thus upheld the decision of the First Appellate Court.

A fresh demand notice dated 9.9.1987 was sent by the workman to the Labour Commissioner, Haryana. The conciliation proceedings thereafter ensued before the Deputy Labour Commissioner, Haryana, Chandigarh. The petitioner- Company represented that a dispute which has arisen in the year 1971 could not be subject matter of any reference or settlement at the present stage being a belated attempt on the part of the workman to agitate this matter, which had long been settled. That stale claim like the one before the said authority could not be agitated by the workman. Despite that the State Government made reference "as to whether the termination of the service of Shri Nasib Singh was justified and in order, if so, to what relief is he entitled." This reference is wholly illegal, arbitrary and without justification, inter-alia on the ground that the State Government has not applied its mind to the submission made before it with regard to the belated nature of the claim of the workman. Such a claim, under no circumstance could be referred for adjudication after a period of 17 years to the Labour Court. It is highly improper that the workman could raise the dispute in the year 1988 against an order of dismissal passed in 1971, when it is not possible for the Management to produce evidence, which was adduced during the course of the inquiry to sustain the order of dismissal. The reference of dispute Annexure P.8 shows non-application of mind on

the part of State Government. Lastly, it has been prayed that Annexure P.8 as well as Annexure P.9 be quashed.

In the written statement, Nasib Singh- workman has inter-alia pleaded that this petition is not maintainable for the reason that his suit was got dismissed on the ground that he should resort to the Industrial Court instead of the Civil Court as he was said to have issued the demand notice, which was still pending and had not been finally decided by the Haryana Government. The same pleas can be taken in the Industrial Reference before the Labour Court where the case is pending for adjudication against the termination of services of the answering respondent. That no writ petition lies against the reference made by the Government as the reference has been made as an administrative act of the Government which is within its competency. The petition has not been filed by a duly authorised person nor there is any valid resolution to file this writ petition. In pursuance to Annexure P.8, the writ petitioner- Management has filed the written statement on 27.1.1989 taking up similar objections as in the writ petition which are to be decided by the Labour Court.

The answering respondent had only issued a complaint to the Labour and Conciliation Officer against the illegal action of the Management, which, as it seems, had been considered by the Conciliation Officer as a demand notice. Even if it be assumed to be a demand notice, it was not withdrawn at any time by the answering respondent. No final action was ever taken by the labour authorities on the said complaint/ demand notice at any time except that the reference has now been made, which is under challenge before this Court. Lastly, it has been prayed that

this petition may be dismissed with costs.

It is pertinent to point here that during pendency of this petition, the respondent- workman Nasib Singh breathed his last on 27.4.2003. His Legal Representatives, namely, Jasbir Kaur - Widow, Vikram Singh son, Harpreet Kaur - daughter and Kamaljit Singh - son have been brought on the record.

I have heard the learned counsel for the parties, besides perusing Annexure P.8 as well as Annexure P.9 with due care and circumspection.

Mr. R.K. Chhibbar, learned Senior Advocate representing the petitioner- Company eloquently urged that the workman was dismissed on 9.6.1971 whereas he raised the dispute in the year 1988 which is after 17 years. Obviously, it is mere a stale claim which could not be referred to the Labour Court by the State Government for the reason that the matter agitated has long been settled. He further canvassed at the bar that while deciding Regular Second Appeal No.1121 of 1977, this Court vide order dated 20.2.1986 Annexure P.5 held that the respondent- workman having once elected the remedy under the Act, Civil Court was not competent. It is further argued that the demand notice which was sent by the workman to the Conciliation Officer for conciliation, in fact was not pursued by the workman rather he absented from the proceedings before the Conciliation Officer and as its consequence, the same failed and thus now the State Government without applying the mind to the facts of the case independently made reference to the Labour Court. Thus Annexure P.8 as well as Annexure P.9 do not stand the test of judicial scrutiny and are liable

to be quashed. To buttress these stances, he has referred to **Jhagrakhand Collieries (Private) Ltd., and another v. Central Government Industrial Tribunal, Dhanbad and others, 1960 Labour Law Journal 71; Orient Paper Mills Sramik Congress v. State of Orissa and others, 1988 Labour Law Journal 75; Aulia Bidi Factory, Burhanpur and others v. Industrial Tribunal, Indore and others, 1966 Labour Law Journal 12; State Bank of India v. Darshan Kumar Jindal, 1979 Punjab Law Reporter 567; Chief Engineer, Hydel Project and Others v. Ravinder Nath and Others, Judgments Today 2008(2) Supreme Court 70; State Bank of India Staff Congress (Regd.) Office, Chandigarh and others v. Union of India through Secretary, Labour Shram Shakti Bhawan, New Delhi and others, 1992-1 Punjab Law Reporter 141; The Nedungadi Bank Ltd. v. K.P. Madhavankutty and others, AIR 2000 Supreme Court 839, Moolchand Kharaiti Ram Hospital K. Union v. Labour Commissioner and others, 2001 Labour Industrial Cases 2147** and **Pondicherry Khadi & Village Industries Board v. P. Kulothangan and another, AIR 2003 Supreme Court 4701.**

Per contra, Mr. J.C. Verma, learned Senior Advocate on behalf of Nasib Singh maintained that the demand notice which was issued by the workman was still pending and the same had not been finally decided by the Haryana Government. To add further to it, the learned Labour Court has also framed an issue with regards to the maintainability of the reference made to it by the State Government and in these premises, it was not competent for the petitioner to pose a challenge to Annexure P.8 as well as P.9. Stressing his every nerve, he pressed into service that the law has not

prescribed any limitation for the State Government to make a reference and that being so, the alleged delay of 17 years in referring the matter by the State Government to the Labour Court is inconsequential and ineffective qua the workman's rights. To fortify these submissions, he has relied upon **Bombay Union of Journalists and others v. The State of Bombay and another, AIR 1964 Supreme Court 1617(1); M/s Western India Watch Co. Ltd. v. The Western India Watch Co. Workers Union and others, AIR 1970 Supreme Court 1205; Binny Limited v. Their Workmen and another, AIR 1972 Supreme Court 1975; Shambu Nath Goyal v. Bank of Baroda, AIR 1978 Supreme Court 1088; M/s. Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and others, AIR 1979 Supreme Court 170; Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and another, AIR 1999 Supreme Court 1351; Ram Chander Morya v. The State of Haryana and others, 1998(4) Recent Services Judgments 619; Ram Kalan v. State of Haryana and others, 2003(3) Recent Services Judgments 311; Sapan Kumar Pandit v. U.P. State Electricity Board, 2001(3) Recent Services Judgments 633; Jupiter Cashew Company v. State of Kerala and others, 1982 Labour Industrial Cases 1431; Central India Machinery Manufacturing Co. Ltd. v. State of Rajasthan and others, 1983 Labour Industrial Cases 108** and **Jarnail Singh v. The Presiding Officer, Labour Court, Amritsar and another, 2003(3) Recent Services Judgments 502.**

The substantial question of law which arises for determination is “Whether a belated claim of over 17 years could be referred and be the

subject-matter of adjudication before the Labour Court by way of reference by the State Government." This Court in Annexure P.5, copy of judgment dated 20.2.1986 while disposing of the Regular Second Appeal No.1121 of 1977 preferred against the decree of the Court of the Senior Subordinate Judge (exercising enhanced appellate powers) Ambala dated 3.3.1977 narrated the facts like this; "the workman issued a demand notice on the Management and sent a copy of the same to the Conciliation Officer. On receipt of the copy, the Conciliation Officer started proceedings under Section 12(2) of the Act. For somewhat hearing, the workman appeared but later on he absented and the proceedings failed." It stems out of these facts that as a matter of fact, the demand notice initially issued by the workman to the Conciliation Officer did not attain finality. This gives rise to the presumption that indeed the same was still pending. In case the settlement had been arrived at, the Conciliation Officer was required to refer the matter to the appropriate authority together with memo of settlement duly signed by the parties. If no settlement had been arrived at, even then he was obligated to send a full report to the Government setting forth the steps taken by the Conciliation Officer with other details as required by Section 12(4) of the Act. Statutorily speaking, no limitation is provided under Section 10 of the Act for making a reference by the appropriate government to a Labour Court or the relevant Industrial Tribunal. The litmus test is as to whether the industrial dispute was in existence on the date of reference for adjudication. If the answer is in the negative then the former's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms, the Government could have exercised the power

whatever be the range of the period which lapsed since the inception of the dispute. In considering the factual position, whether the dispute did exist on the date of reference, the Government could take into account factors inter-alia such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period but such conciliation proceedings are evidence of the existence of the industrial dispute. Here in this case, on the date of reference, the conciliation proceedings as emanates from the preceding discussion were not concluded. That being so, it cannot be said that the dispute did not exist on that day. The Government's power to refer an industrial dispute for adjudication has one limitation of time, i..e, so long as the dispute exists. The word "at any time" as used in the language of Section 10 of the Act are ex-facie indicator to a period without boundary. As ruled by the Apex Court in re: **Sapan Kumar Pandit (supra)**, "if the dispute existed on the date when the reference was made by the government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference." Ostensibly, this is the answer of the substantial question of law which arises herein. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding relief but, i.e., different matter altogether as held in re: **Sapan Kumar Pandit (supra)**. In re: **Ram Kalan (supra)**, the petitioner was employed as "Running Kaimdar" in the services of Kaithal Cooperative Sugar Mills Limited. His service was terminated along with other workmen. The demand notice dated 22.1.1992 sent by him in the

matter of previous termination of service was rejected by the State Government vide communication dated 30.3.1992 on the ground that he had worked in the service of the Mill for less than 240 days. After the termination of his service with effect from 5.4.1993, he filed civil suit No.426 of 1995 in the Court of Additional Cviil Judge, Senior Division, Kaithal. The same was dismissed vide judgment dated 11.5.2000 holding that the termination of the service of the workman was legally correct and that the suit was not maintainable because the petitioner had already moved the Labour Court. The Division Bench of this Court held that the Government did not decline the reference of the dispute raised by the petitioner on the ground that it was barred by res-judicata and the question "Whether the judgment and decree passed by the Additional Civil Judge (Senior Division), Kaithal would operate as res-judicata" can be decided by the concerned adjudicatory body to whom the reference may be made by the Government. Ultimately, the writ petition was allowed and Annexure P.2 was quashed with a direction to the State Government to refer the dispute raised by the petitioner to the appropriate Labour Court/ Industrial Tribunal. In the present case, the demand notice was issued by the workman. On its basis, the Conciliation Officer started proceedings. During their pendency, the workman ceased to put in his appearance. Ultimately, this demand notice could not be decided in the light of the provisions of Section 12 of the Act and for that reason neither any settlement nor any report could be referred to the State Government. In this factual scenario, it would be very difficult to say that the State Government had no material before it to make reference to the Labour Court. In re: **Bombay Union of Journalists and**

others (supra), the Apex Court while discussing the scope of Section 10 as well as 12 of the Act observed that "it is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal." In re: **M/s Western India Watch Co. Ltd. (supra)**, the Apex Court observed as under:-

> "In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand, it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference.
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> In the present case though nearly four years had gone by

since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and therefore, required its reconsideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power."

In re: **Binny Limited (supra)**, Hon'ble the Supreme Court ruled that "The fact that the government has refused to refer a dispute on previous occasions does not make invalid the subsequent order of reference."

In re: **Shambu Nath Goyal (supra),** the Apex court ruled as under:-

"In this case, the Tribunal completely misdirected itself when it observed that no demand was made by the workman claiming reinstatement after dismissal. When the inquiry was held, it is an admitted position, that the workman appeared and claimed reinstatement. After his dismissal, he preferred an appeal to the Appellate forum and contended that the order of dismissal was wrong, unsupported by evidence and in any event, he should be reinstated in service. If that was not a demand for reinstatement addressed to employer what else would it convey. That appeal itself is a representation questioning the decision of the Management dismissing the workman from service and praying for reinstatement. There is further a fact that when the Union approached the Conciliation Officer the Management

> appeared and contested the claim for reinstatement. There is thus unimpeachable evidence that the concerned workman persistently demanded reinstatement. If in this background, the Government came to the conclusion that there exists a dispute concerning workman S.N. Goyal and it was an industrial dispute because there was demand for reinstatement and a reference was made, such reference could hardly be rejected on the ground that there was no demand and the industrial dispute did not come into existence. Therefore, the Tribunal was in error in rejecting the reference on the ground that the reference was incompetent. Accordingly, this appeal is allowed and the Award of the Tribunal is set aside and the matter is remitted to tribunal for disposal according to law."

Further in re: **M/s. Avon Services Production Agencies (P) Ltd. (supra)**, it has been held by the Apex Court that "The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act." Their Lordships further held as under:-

> "A refusal of the appropriate Government to make a reference is not indicative of an exercise of power under S.10(1), the exercise of the power would be a positive act of making a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The

> power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the continued existence of the dispute and the wisdom of referring it, in the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all existed, stands resolved."

Further in re: **Ajaib Singh (supra)**, Hon'ble the Supreme Court ruled that "The provisions of Art. 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal.

Adverting to the facts of the case in hand, the State Government had never declined to make reference to Labour Court. On surveying the entire afore-quoted law, it boils down that the reference made by the State Government to Labour Court cannot be quashed merely on the ground of delay and laches. There is nothing on the record to reveal that the workman had intentionally filed civil suit just to cause delay in the

adjudication of the matter. Furthermore, he was to gain nothing by delaying the proceedings. In re: **Jhagrakhand Collieries (Private) Ltd., and anohter (supra),**the Chief Minister of Indian State of Korea had issued a notification for the purpose of assuring minimum wages to colliery workers. The workmen concerned demanded an increase in their basic wages claiming the benefit under Clause 2 of the notification. The company resisted the demand on two grounds. Their lordships had held that "We are, therefore, satisfied that the Appellate Tribunal was plainly and clearly in error in modifying the original award by giving direction that the benefit of the increments awarded to the employees drawing a basic monthly wage beyond Rs.30 should take effect from 1.11.1947, instead of 27.9.1952. Thus, the observations rendered in this case in no manner applies to the facts of the instant case. Further in re: **Orient Paper Mills Sramik Congress (supra),** Hon'ble High Court of Orissa held that "the Government must consider the relevant material and form its opinion on germane considerations. However, subjective the satisfaction of the State Government may be, if the satisfaction is based on non-consideration of the relevant materials or considerations not germane to the issue, then that opinion has to be interfered under Articles 226 and 227." Coming to the present case, there is nothing on the record to show that the satisfaction of the State Government in making reference to the Labour Court is based on non-consideration of the relevant material or consideration not germane to the issue. In re: **Aulia Bidi Factory, Burhanpur, and others (supra),** Hon'ble Madhya Pradesh High Court held that "the Government would not be justified in passing an order referring the matter to the tribunal without

being satisfied on the materials placed before it that a dispute did exist or was apprehended." A careful delving into the case of **Aulia Bidi Factory, Burhanpur, and others (supra)** would reveal that indeed the dispute was not with the employer rather the same was between Rashtriya Bidi Mazdoor Sangh and Bidi Manufacturers' Association. Here in this case, as already observed the industrial dispute did exist. That being so, no mileage can be driven by the petitioner- firm in the observations made in this authority. In re: **Darshan Kumar Jindal (supra),** this Court held that "the appellant has raised a new point of jurisdiction of the Civil Court to entertain the present suit on the facts and circumstances of this case. The appellant was permitted to raise the point of jurisdiction subject to the condition that even if he succeeds on this point, he will pay the costs of the respondent in all the three Courts as the respondent has already been out of service. Thus these observations are also of no assistance to the petitioner- Company. In re: **Ravinder Nath and others (supra)** held as under:

> "In the present case, while the employers- appellants claimed that the termination simpliciter was effected in the light of the Rules under the Certified Standing Orders, the plaintiffs-respondents alleged that the principles under the provisions of the Certified Standing Orders were completely ignored, and a highly arbitrary, discriminatory approach was adopted by the employer by picking and choosing the plaintiffs for the purposes of termination. The dispute, therefore, clearly fell outside the civil court's jurisdiction as per the decisions of this Court relied upon earlier. (Para 15)

> Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly, the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the others contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the plaintiffs- respondents, if any, arising out of the Labour Jurisprudence."

It is plain and patent from these observations that the right of the plaintiffs- respondents arising out of the labour jurisprudence in any manner were not commented upon. So, these observations also do not run in favour of the petitioner- Company. In re: **State of Bank of India Staff Congress Office Chandigarh and others (supra)**, the industrial dispute was not involved as it was a case of transfer. As such, the observations rendered by this Court in that case have no applicability to the instant case. In re: **K.P. Madhavankutty and others (supra)**, it has been held that "no time limit has been prescribed with regards to the power of the Government to make reference under Section 10 of the Act. But it does not mean that

power can be exercised at any point of time. The stale dispute cannot be referred." In that case, the bank employee was dismissed from service after inquiry. His appeal also met failure. After 7 years thereafter, he complained of discrimination on the ground that two other dismissed employees were reinstated by the Bank. It was nowhere mentioned as to under what circumstances they were dismissed and subsequently reinstated. In these premises, it was held that it cannot be said that the complaint made after the lapse of seven years gave rise to industrial dispute or that industrial dispute could be apprehended. In paragraph No.6 of the judgment, their Lordships observed that at the time reference was made, no industrial dispute existed or could be even said to have been apprehended, whereas in the case at hand, it is found that the industrial dispute did exist at the time when the reference was made. Thus in my opinion, the facts of **K.P. Madhavankutty and others' case (supra)** are distinguishable from the one in hand. In re: **Moolchand Kharati Ram Hospital K. Union (supra)**, it has been observed that the order made by the government making reference to the Tribunal is administrative in nature. It is still open to the High Court to examine whether relevant consideration in making reference had been taken note of or not. In the current case, the record does not reveal that relevant considerations in making the reference had not been taken note of. The facts of **Pondicherry Khadi & Village Industries Board's case (supra)** are poles apart from the one in hand.

In view of the preceding discussion, I do not consider it proper to interfere with the impugned order Annexure P.8 as well as notice Annexure P.9 in the exercise of writ jurisdiction under Articles 226/227 of

the Constitution of India. Sequelly, this petition fails and is dismissed. As the reference is very old, the Labour Court should dispose it of as expeditiously as possible.

October 31, 2008 **(HARBANS LAL)**
renu **JUDGE**

Whether to be referred to the Reporter? Yes.